(21,130.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 359.

THE WATERS-PIERCE OIL COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF TEXAS.

IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

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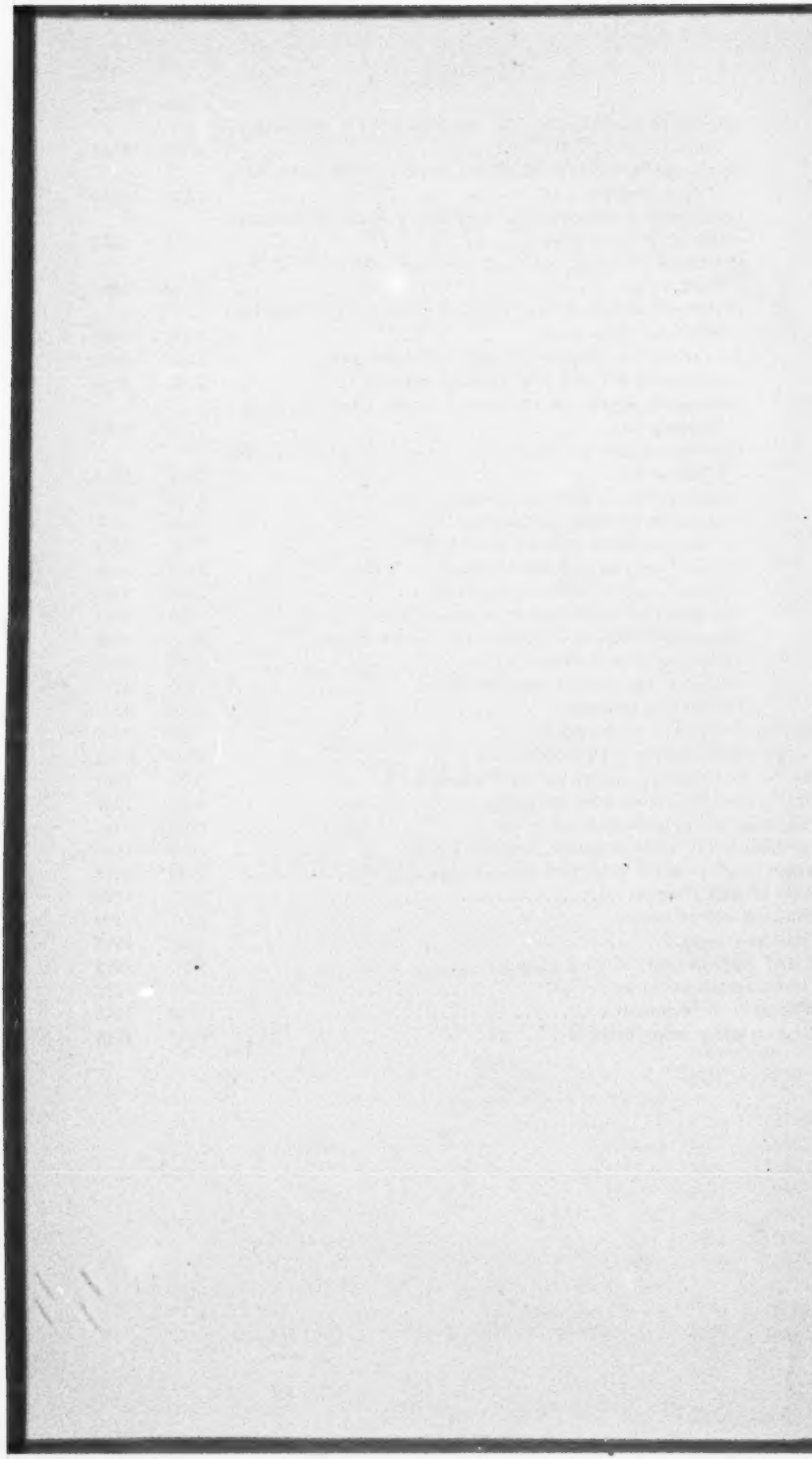

a

No. 24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

1 *Caption.*

THE STATE OF TEXAS, *County of Travis:*

At a term of the District Court of the 26th Judicial District of Texas, begun and holden at Austin, within and for the County of Travis, before the Honorable V. L. Brooks, and ending on the 29th day of June, A. D. 1907, the following case came on for trial, to wit:

No. 24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

2 *Agreement in Regard to Transcript.*

Filed July 30th, 1907.

In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS-PIERCE OIL COMPANY.

In this cause, for the purpose of avoiding unnecessarily encumbering the transcript, it is agreed that this suit was instituted and Plaintiff's Original Petition filed, on *September 22nd, A. D. 1906,* and that said petition stated substantially the same causes of action set up in the petition upon which plaintiff went to trial and which were, on the trial submitted by the court to the jury, and, as the sole purpose of incorporating the original petition in the transcript would be to show the date of the institution of this suit, it is agreed that the clerk, in making up the transcript in this case shall copy in the transcript, in lieu of the original petition, this agreement.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
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R. V. DAVIDSON,
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J. P. LIGHTFOOT,
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JNO. W. BRADY,
County Attorney, Travis County.
GREGORY & BATTS,
ALLEN & HART,
Attorney- for Plaintiff.

(Endorsed:) No. 24551. The State of Texas *vs.* Waters-Pierce Oil Company. Agreement in Regard to Transcript. Filed July 30, 1907. D. J. Pickle, Clerk.

3 *Plaintiff's Second Amended Original Petition.*

Filed April 29, 1907.

No. 24551.

THE STATE OF TEXAS, *County of Travis:*

Leave of Court had, plaintiff files this its second amended original petition as follows:

No. 24551.

THE STATE OF TEXAS, *County of Travis:*

To the Honorable the District Court of the 26th Judicial District of Texas:

Plaintiff is the State of Texas, represented herein by and through R. V. Davidson, her Attorney General, and John W. Brady, County Attorney of Travis County, who is acting herein under instructions from and by the authority of the said Attorney General.

The defendant is the Waters-Pierce Oil Company, acting as and purporting to be a corporation, and claiming, acting and purporting to be incorporated under and by virtue of a charter granted and issued by the State of Missouri on the 29th day of May, A. D. 1900, and doing business in Texas and claiming to have authority to do business in Texas by virtue of a permit issued by the Secretary of State of the State of Texas on the 31st day of May, A. D. 1900.

4 II.

That heretofore, to-wit: on or about January 1st, 1870, John D. Rockefeller, John D. Archbold, H. H. Rogers, William Rockefeller, Henry M. Flagler, and a number of other persons, the names of some of whom cannot be ascertained by plaintiff, and the names of others of whom are hereinafter set out, conceived the scheme of monopolizing and controlling the business of refining, transporting and selling petroleum and the products thereof throughout the United States, including the State of Texas; that to that end they entered into a conspiracy and a series of conspiracies by and among themselves and by and with other individuals and corporations, including the defendant corporation, from that time up to the date of filing of this amended petition; none of said conspiracies has been abandoned, and each has continued and the conspiracy and conspiracies are still in existence and are still being carried out and actively prosecuted.

That to the end named and in pursuance of said conspiracy on or about May 7th, 1878, the parties aforesaid and William H.

Waters and Henry C. Pierce and the Chess Carley Company and the Standard Oil Co. (of Ohio) and the officers and stockholders of each of said companies entered into a further conspiracy as hereinafter set out.

And on or about Jan. 2, 1882, and Jan. 4, 1882, the corporations hereinbefore named and all the persons signing the trust agreement of those dates hereinafter set forth and the firms, individuals and corporations in said trust agreements set forth entered into a conspiracy as hereinafter set forth.

And said persons and other persons entered into the other conspiracies hereinafter specifically set forth.

That among the persons and corporations who primarily entered into the conspiracy aforesaid, and who have since entered into the conspiracy and conspiracies having for their purpose the unlawful undertakings hereinbefore and hereinafter detailed are the following:

H. C. Pierce.
C. M. Adams.
Andrew M. Finlay.
C. L. Ackert.
H. M. Tilford.
H. H. Rogers.
W. H. Tilford.
John D. Archbold.
William Rockefeller.
O. B. Jennings.
Benjamin Brewster.
H. M. Flagler.
W. P. Thompson.
H. A. Hutchings.
O. H. Payne.
Silas H. Payne.
C. M. Pratt.
R. H. McNall.
John D. Johnson.
—— Elliott.
—— Cary.
T. E. Buschnell.
Paul Babcock, Jr.
J. H. Alexander.
Clay Arthur Pierce.
M. M. Van Bueren.
Wade Hampton.
The Standard Oil Company.
The Standard Oil Company of Indiana.
The Standard Oil Company of New York.
The Standard Oil Company of Kentucky.
The Standard Oil Company of Ohio.
The Waters-Pierce Oil Company.
Standard Oil Company of Iowa.
The Continental Oil Company.

The Republic Oil Company.
The Union Tank Line Company.
The Security Oil Company.
The Galena Signal Oil Company.

All of the companies forming, participating in the formation of, or acquired by the Standard Oil Trust, and all officers and agents of said companies, and all companies and individuals mentioned in the Standard Oil Trust agreement hereinafter set forth, and all companies formed by the Standard Oil Trust, or formed by the Standard Oil Company, or acquired or controlled by said company and the officers of said companies.

That said conspiracy was so widespread and participated in by so many companies and persons that it is impossible for plaintiff to name all of them. And all of said conspiracies are still in existence and are still being carried out and actively prosecuted.

(2) That the conspiracy and conspiracies aforesaid have included and do include the controlling and monopolization of the sale of refined oils and all the products of petroleum in the State of Texas; that the conspiracy as herewith detailed in, of and with reference to the State of Texas, had and has continuously had and has among its purposes:

(*a*) The sale of all refined oil in Texas.

7 (*b*) The manufacture and sale of all the products of petroleum.

(*c*) The suppression and prevention of all competition in said business.

(*d*) The creation of a monopoly in refining and sale and transportation of petroleum and its products.

(*e*) The fixing, maintaining, increasing and regulating of the price of all oil and the products of petroleum.

(*f*) The suppression and prevention of all competition in the control and production of crude oil and fixing and controlling the amount of oil produced and sold in the State of Texas.

(3) That the means adopted in the carrying out of the conspiracy and conspiracies aforesaid, and the means used and employed by the conspirators aforesaid, including defendant, have been and are calculated to carry out the purposes of said conspiracy and have been and do result in the practical monopolization of the business of selling refined oil and the products of petroleum and in controlling the price and output of oil in the State of Texas, and in destroying and preventing competition.

III.

That heretofore, to-wit: on or about May 7th, 1878, William H. Waters and Henry C. Pierce were engaged in the business of refining and selling petroleum and its products in the State of Missouri and in the State of Texas and elsewhere, and Chess-Carley Company and the Standard Oil Company (of Ohio) the last named company being controlled by the conspirators first herein named, were engaged in the sale of petroleum and its products in the States of Missouri and Texas and elsewhere; that upon said date, said named in-

dividuals and corporations, and the officers and agents of the latter,
in further pursuance of the general conspiracy to monopo-
8 lize and control the oil business, and especially for the pur-
pose of monopolization and controlling the oil business in a section of the United States, including the State of Texas, made and entered into a conspiracy to secure control and monopolize the oil business in said section, including the State of Texas, and to fix and control the price of oil in said territory and to eliminate and prevent all competition by and among themselves and between themselves and others in said business. This conspiracy and the acts thereunder have been adopted by the other conspirators, including defendant, and has not been abandoned, but is still being carried out.

(2) That in the accomplishment of the conspiracy and the unlawful purpose hereinbefore set out, said parties caused a corporation to be created under the name of the Waters-Pierce Oil Company (its charter being issued by the State of Missouri on said May 7th, 1878), the capital stock of which was placed at $100,000 divided into 1,000 shares of $100 each; that of said capital stock 400 shares were issued and assigned to W. H. Waters and H. C. Pierce, 400 shares to the Chess-Carley Company, and 200 shares to the Standard Oil Company.

That the company then organized is in fact the same company doing business under a reputed reorganization with a charter dated May 29th, 1900; that allegations of facts occurring prior to May 29, 1900, are with reference to said Company under its original charter, and occurring since then with reference to the company as acting under the charter of that date; the company as reorganized adopted all the acts, carried out and is carrying out all the contracts, schemes and conspiracies of the company as originally organized, and in every way has taken the place of the company as originally organized.

(3) That prior to this date, the conspirators first named herein had taken other steps to secure the control of the oil business in
the United States, and to that end, had organized the Stand-
9 ard Oil Company (of Ohio), and had bought the property
of and had secured the control of a large number of corporations and firms (the names of all of which cannot be stated by plaintiff), and had apportioned the territory of the United States to such corporations as they chose or saw fit to use for the transaction of the oil business; that the conspirators aforesaid conceived that the acquisition of all the oil business in the territory which W. H. Waters and H. C. Pierce and Chess-Carley Company were operating could best and most easily be accomplished by the formation of a corporation in which said last named parties should have stock, and said parties acquiesced in the policy and became parties to the conspiracy, and said parties and their successors and assigns, and the corporation aforesaid and its assigns and its stockholders and directors and other officers have ever since then, and up to this time, been parties to the conspiracy and have acquiesced in and adopted and aided in carrying out the plans adopted for the consummation of the purposes of said conspiracy.

(4) That in pursuance of and as a part of the general plan and conspiracy for the monopolization of the oil business, when the Waters-Pierce Oil Company was formed, it was agreed and understood (and the agreement has continuously since been acted upon and has since its organization been acquiesced in and acted upon by defendant to this time) that the Waters-Pierce Oil Company was to confine its business to the States of Texas, Arkansas, the Territory of Oklahoma and Indian Territory and parts of the States of Missouri and Louisiana, and the Republic of Mexico, and was not to do or attempt to do any business in any other part of the United States or elsewhere, and it was agreed and understood that neither the Standard Oil Company (of Ohio) and none of its subsidiary or dependent companies and none of the Companies set forth in
10 the trust agreement dated Jany. 2, 1882, and none of the companies controlled by the conspirators herein named should sell any oil, products of petroleum, or do any business in the products of oil in any of the territory named as the territory of the Waters-Pierce Oil Company (as above set out).

(5) That the understanding and agreement above referred to has been observed and carried out and insisted upon and been treated as effective by and between all corporations, trusts, quasi or reputed corporations and all concerns owning or claiming the property or the stock or business, or any part thereof, of any of the corporations primarily entering into the agreement or understanding and their successors and assigns, from the time of the creation of the Waters-Pierce Oil Company up to the time of the filing of this amended petition, and during all this period this agreement and understanding has been so observed by and between the Waters-Pierce Oil Company and the Standard Oil Company (of Ohio) and its successors, and the subsidiary companies and the other companies hereinafter named and all companies the control of which were in the Standard Oil Trustees and now controlled by the Standard Oil Company, in and with reference to the State of Texas, as to prevent all competition between said companies in said State, and to create a monopoly therein in the State of Texas, the officers, agents and employees of the Waters-Pierce Oil Company have, in the State of Texas, observed, abided by, and acted upon said understanding and agreement, and have during all of said time made same operative and effective, and said agreement and understanding has been observed and acted upon by defendant from the date of its incorporation to this time.

(6) That as a part of the contract, agreement, understanding and conspiracy at the times aforesaid, and as a consideration by which exclusive territory was set aside for the use, exploita-
11 tion and enjoyment of said Waters-Pierce Oil Company, it agreed and contracted to purchase all of its supplies of refined and unrefined oils, naval stores and other articles in which it was authorized to deal, from the Standard Oil Company and companies controlled by it, which said contract, agreement and understanding was enforced and observed by the defendant herein, and has at all times been observed by defendant since the date of its incorporation to the present time.

IV.

Plaintiff further avers that in pursuance of the conspiracy and conspiracies hereinbefore effected and entered into, as set out, and in order to make more effective and binding and complete the monopolization of the oil business throughout the United States, including the State of Texas, a trust agreement was entered into and formed by the persons, firms and corporations hereinafter mentioned, including the parties named in said agreement, and the parties signing same and including the Waters-Pierce Oil Company.

(2) That in violation of the law and in abuse of its corporate powers and in the exercise of privileges, rights and franchises not conferred upon it, the Waters-Pierce Oil Company on or about the 2nd day of January, A. D. 1882, and on or about the 4th day of said month and year entered into and became a party to certain trust agreements, and ever since then has, and the defendant has, in the manner, and to the extent below stated, observed, performed and carried out said agreements, copies of which are as follows:

Exhibit "A."

This agreement made and entered upon this 2nd day of January, A. D. 1882, by and between all the persons who shall now or may hereafter execute the same as parties thereto.

12 Witnesseth: I. It is intended that the parties to this agreement shall embrace three classes, to-wit:

1. All the stockholders and members of the following corporations and limited partnerships, to-wit:—

Acme Oil Company, New York.
Acme Oil Company, Pennsylvania.
Atlantic Refining Company of Philadelphia.
Bush & Company (limited).
Camden Consolidated Oil Company.
Elizabethport Acid Works.
Imperial Refining Company (limited).
Charles Pratt & Company.
Paine, Abbett & Company.
Standard Oil Company, Ohio.
Standard Oil Company, Pittsburg.
Smith's Ferry Oil Transportation Company.
Solar Oil Company (limited).
Sone & Fleming Manufacturing Company, (limited).

Also all the stockholders and members of such other corporations and limited partnerships as may hereafter join in this agreement, at the request of the trustees herein provided for.

2. The following individuals, to-wit:—W. C. Andrews, John D. Archbold, Lide K. Arter, J. A. Bostwick, Benjamin Brewster, D. Bushnell, Thomas C. Bushnell, J. N. Camden, Henry L. Davis, H. M. Flagler, John Huntington, H. A. Hutchins, Charles F. G. Heye, O. P. Jennings, Charles Lockhart, A. M. McGregor, William H. Macy, William H. Macy, Jr., Estate of Josiah Macy, William H.

Macy, Jr., executor, O. H. Payne, A. J. Pouch, John D. Rockefeller, William Rockefeller, Henry H. Rogers, W. P. Thompson, J. J. Vandergrift, William T. Wardwell, W. G. Warden, Joseph L. Warden Warden, Frew & Co., Louise C. Wheaton, H. M. Hanna
13 and Geo. W. Chapin, D. M. Harkness, O. H. Payne, trustee, Charles Pratt, Horace A. Pratt, C. M. Pratt, Juliah H. York, George H. Viles, M. R. Keith, trustee, George F. Chester.

Also all such individuals as may hereafter join in the agreement at the request of the trustees herein provided for.

3. A portion of the stockholders and members of the following corporations and limited partnerships, to-wit:—

American Lubricating Oil Company.
Baltimore United Oil Company.
Beacon Oil Company.
Bush & Denslow Manufacturing Company.
Central Refining Company of Pittsburg.
Cheesebrough Manufacturing Company.
Chess-Carley Company.
Consolidated Tank Line Company.
Inland Oil Company.
Keystone Refining Company.
Maverick Oil Company.
National Transit Company.
Portland Kerosene Oil Company.
Producers' Consolidated Land and Petroleum Company.
Signal Oil Works (limited).
Thompson & Bedford Company (limited).
Devoe Manufacturing Company.
Eclipse Lubricating Oil Company (limited).
Empire Refining Company (limited).
Franklin Pipe Company (limited).
Galena Oil Works (limited).
Galena Farm Oil Company (limited).
Germania Mining Company.
Vacuum Oil Company.
H. C. Van Tine & Company (limited).
Waters-Pierce Oil Company.

14 Also stockholders and members (not being all thereof) of other corporations and limited partnerships who may hereafter join in this agreement at the request of the trustees herein provided for.

II. *Purposes of Organization.*

The parties hereto do covenant and agree to and with each other, each in consideration of the others, as follows:

1. As soon as practicable a corporation shall be formed in each of the following States, under the laws thereof, to-wit: Ohio, New York, Pennsylvania, New Jersey; provided, however, that instead of organizing a new corporation any existing charter and organization may be used for the purpose when it can advantageously be done.

2. The purposes and powers of said corporations shall be to mine for, produce, manufacture, refine and deal in petroleum and all its products, and all the materials used in such business, and transact other business collateral thereto. But other purposes and powers shall be embraced in the several charters such as shall seem expedient to the parties procuring the charter, or, if necessary to comply with the law, the powers aforesaid may be restricted and reduced.

3. At any time hereafter, when it may seem advisable to the trustees herein provided for, similar corporations may be formed in other States and Territories.

4. Each of said corporations shall be known as the Standard Oil Company of (and here shall follow the name of the State or Territory by virtue of the laws of which said corporation is organized).

5. The capital stock of each of said corporations shall be fixed at such an amount as may seem necessary and advisable to the parties organizing the same, in view of the purpose to be accomplished.

15 6. The shares of stock of each of said corporations shall be issued only for money, property or assets equal at a fair valuation to the par value of the stock delivered therefor.

7. All the properties, real and personal, assets and business of each and all of the corporations and limited partnerships mentioned or embraced in class first shall be transferred to and vested in the said several Standard Oil Companies. All of the property, assets and business in, or of each particular State, shall be transferred to and vested in the Standard Oil Company of that particular State, and in order to accomplish such purpose the directors and managers of each and all of the several corporations and limited partnerships mentioned in class first are hereby authorized and directed by the stockholders and members thereof (all of them being parties to this agreement) to sell, assign, transfer, convey and make over, for the consideration hereinafter mentioned, to the Standard Oil Company or companies of the proper State or States, as soon as said corporations are organized and ready to receive the same, all the property, real and personal, assets and business of said corporations and limited partnerships. Correct schedules of such property, assets and business shall accompany each transfer.

8. The individuals embraced in class second of this agreement do, each for himself, agree, for the consideration hereinafter mentioned, to sell, assign, transfer, convey and set over, all the property, real and personal, assets and business mentioned and embraced in schedules accompanying such sale and transfer to the Standard Oil Company or companies of the proper State of States, as soon as the said corporations are organized and ready to receive the same.

16 *Trustees in Control.*

9. The parties embraced in class third of this agreement do covenant and agree to assign and transfer all of the stock held by them in the corporations or limited partnerships herein named, to the trustees herein provided for, for the consideration and upon the

terms hereinafter set forth. It is understood and agreed that the said trustees and their successors may hereafter take the assignment of stocks in the same or similar companies upon the terms herein provided, and that when-ever and as often as all the stocks of any corporations or limited partnerships are vested in said trustees the proper steps may then be taken to have all the moneys, property, real and personal, of such corporation or partnership assigned and conveyed to the Standard Oil Company, of the proper State, on the terms and in the mode herein set forth, in which event the trustees shall receive stocks of the Standard Oil Companies, equal to the value of the money, property and business assigned to be held in the place of stocks of the company or companies assigning such property.

10. The consideration for the transfer and conveyance of the money, property and business aforesaid to each or any of the Standard Oil Companies shall be stock of the respective Standard Oil Company, to which said transfer or conveyance is made, equal at par value to the appraised value of the money, property and business so transferred. Said stock shall be delivered to the trustees hereinafter provided for, and their successors, and no stock of any of said companies shall ever be issued except for money, property or business, equal at least to the par value of the stock so issued for any purpose, except to the trustees herein provided for, to be held subject to the trustees hereinafter specified. It is understood, however, that this provision is not intended to restrict the purchase,
17 sale and exchange of property by said Standard Oil Companies as fully as they may be authorized to do by their respective charters; provided only that no stock be issued therefor except to said trustees.

11. The consideration for any stocks delivered to said trustees, as above provided for, as well as for stocks delivered to said trustees by persons mentioned or included in class third of this agreement, shall be the delivery by said trustees to the persons entitled thereto of trust certificates hereinafter provided for equal at par value to the par value of the stocks of the said several Standard Oil Companies so received by said trustees and equal to the appraised value of the stocks of other companies or partnerships delivered to said trustees.

The said appraised value shall be determined in a manner agreed upon by the parties in interest and said trustees.

It is understood and agreed, however, that the said trustees may with any trust funds in their hands, in addition to the mode above provided, purchase the bonds and stocks of other companies engaged in business similar or collateral to the business of said Standard Oil Companies on such terms and in such mode as they may deem advisable, and shall hold the same for the benefit of the owners of said trust certificates, and may sell, assign, transfer and pledge such bonds and stocks whenever they may deem it advantageous to said trust so to do.

III. *Powers of Trustees.*

The trusts upon which said stocks shall be held, and the number, powers and duties of said trustees, shall be as follows:

1. The number of trustees shall be nine.

2. J. D. Rockefeller, O. H. Payne, and William Rockefeller are hereby appointed trustees to hold their office until the first Wednesday of April, A. D. 1885.

18 3. J. A. Bostwick, H. M. Flagler and W. G. Warden are hereby appointed trustees to hold their office until the first Wednesday of April, A. D. 1884.

4. Charles Pratt, Benjamin Brewster and John Archbold are hereby appointed trustees to hold their office until the first Wednesday of April, A. D. 1883.

5. Elections for trustees to succeed those herein appointed shall be held annually, at which elections a sufficient number of trustees shall be elected to fill all vacancies occurring either from the expiration of the term of office or trustee or from any other cause. All trustees shall be elected to hold their office for three years, except those elected to fill a vac*nacy* arising from any cause except expiration of term, who shall be elected for the balance of the term of the trustee whose place they are elected to fill. Every trustee shall hold his office until his successor is elected.

6. Trustees shall be elected by ballot by the owners of trust certificates or their proxies. At all meetings the owners of trust certificates who may be registered as such on the books of the trustees may vote in person or by proxy, and shall have one vote for each and every share of trust certificate standing in their names, but no such owner shall be entitled to vote upon any share which has not stood in his name thirty days prior to the day appointed for the election. The transfer books may be closed for thirty days immediately preceding the annual election. A majority of the shares represented at said election shall elect.

Must Meet in New York.

7. The annual meeting of the owners of said trust certificates for the election of trustees, and for other business, shall be held at the office of the trustees in the City of New York on the first

19 Wednesday of April of each year, unless the place of meeting be changed by the trustees, and said meeting may be adjourned from day to day until its business is completed. Special meetings of the owners of said trust certificates may be called by a majority of the trustees at such times and places as they may appoint. It shall also be the duty of the trustees to call a special meeting of holders of trust certificates whenever requested to do so by a petition signed by the holders of 10 per cent. in value of such certificates. The business of such special meetings shall be confined to the object specified in the notice given therefor. Notice of the time and place of all meetings of the owners of trust certificates shall be given in one of the principal newspapers of each State in which a Standard Oil Company exists at least ten days before such meeting. At any

meeting, a majority in value of the holders of trust certificates represented consenting thereto, by-laws may be made, amended and repealed relative to the mode of the election of trustees, and other business of the holders of trust certificates; provided, however, that said by-laws shall be in conformity with this agreement. By-laws may also be made, amended and repealed at any meeting by and with the consent of a majority in value of the holders of trust certificates, which alter this agreement relative to the number, powers, and duties of the trustees, and to other matters tending to the more efficient accomplishment of the objects for which the trust is created, provided only that the essential intents and purposes of this agreement be not thereby changed.

8. Whenever a vacancy occurs in the board of trustees more than sixty days prior to the annual meeting for the election of trustees, it shall be the duty of the remaining trustees to call a meeting of the owners of Standard Oil trust certificates for the purpose of electing a trustee or trustees to fill the vacancy or vacancies. If any
20 vacancy occurs in the board of trustees, from any cause, within sixty days of the dates of the annual meeting for the election of trustees, the vacancy may be filled by a majority of the remaining trustees, or at their option, may remain vacant until the annual election.

9. If, for any reason, at any time, a trustee or trustees shall be appointed by any court to fill any vacancy or vacancies in said board of trustees, the trustee or trustees so appointed shall hold *him* or their respective office or offices only until a successor shall be elected in the manner above provided for.

Title to Stock Passes.

10. Whenever any change shall occur in the board of trustees the legal title to the stock or other property held in trust shall pass to and vest in the successors of said trustees without any formal transfer thereof, but if at any time such formal transfer shall be deemed necessary or advisable it shall be the duty of the board of trustees to obtain the same, and it shall be the duty of any retiring trustee, or the administrator or executor of any deceased trustee to make said transfer.

11. The trustees shall prepare certificates which shall show the interest of each beneficiary in said trust and deliver them to the person properly entitled thereto. They shall be divided into shares of the par value of $100 each, and shall be known as the Standard Oil trust certificates, and shall be issued subject to all the terms and conditions of this agreement. The trustees shall have power to agree upon and direct the form and contents of said certificates, and the made in which they are signed, attested and transferred. The certificates shall contain an express stipulation that the holders thereof shall be bound by the terms of this agreement and by the by-laws herein provided for.

12. No certificate shall be issued except for stocks and bonds
21 held in trust as herein provided for, and the par value of certificates issued by said trustees shall be equal to the par

value of the stocks of said Standard Oil Company and the appraised value of other bonds and stocks held in trust. The various bonds, stocks and money held under said trust shall be held for all parties in interest jointly, and the trust certificates so issued shall be the evidence of the interest held by the several parties in the trust. No duplicates certificates shall be issued by the trustees, except upon surrender of the original certificate or certificates for cancellation, or upon satisfactory proof of the loss thereof, and in the latter case they shall require a sufficient bond of indemnity.

13. The stocks of the various Standard Oil Companies held in trust by said trustees shall not be sold, assigned or transferred by said trustees, or by their beneficiaries, or both combined, so long as this trust indures. The stocks and bonds of other companies held by said trustees may be by them exchanged or sold and the proceeds thereof distributed pro rata to the holders of trust certificates, or said proceeds may be held and reinvested by said trustees for the purposes and uses of the trust, provided, however, that said trustees may, from time to time, assign such shares of stock of said Standard Oil Company as may be necessary to qualify any person or persons chosen or to be chosen as directors and officers of any of said Standard Oil Companies.

Distribution of Dividends.

14. It shall be the duty of said trustees to receive and safely to keep all interest and dividends declared and paid upon any of the said bonds, stocks and moneys held by them in trust, and to distribute all moneys received from such sources, or from sales of trust property, or otherwise by declaring and paying dividends upon the Standard Trust certificates as finds accumulate, which in their judgment are not needed for the use and expenses of said trust.

The trustees, shall, however, keep separate accounts of receipts from interest and dividends, and of receipts from sales or transfers of trust property and, in making any distribution of trust funds, in which moneys derived from sales or transfers shall be included, shall render the holders of trust certificates a statement showing what amount of the finds distributed has been derived from such sales or transfers. The said trustees may be also authorized and empowered by a vote of a majority in value of holders of trust certificates, whenever stocks or bonds have accumulated in their hands from money purchases thereof, or the stocks or bonds held by them have increased in value, or stock dividends shall have been declared by any of the companies whose stocks are held by said trustees, or whenever from any such cause it is deemed advisable so to do, to increase the amount of trust certificates to the extent of such increase or accumulation of values, and to divide the same among the persons then owning trust certificates, pro rata.

15. It shall be the duty of said trustees to exercise general supervision over the affairs of said several Standard Oil Companies, and, as far as practicable, over the other companies or partnerships, any

portion of whose stock is held in said trust. It shall be their duty, as stockholders of said company, to elect as directors any officers thereof, faithful and competent men. They may elect themselves to such positions when they see fit so to do, and shall endeavor to have the affairs of all of said companies managed and directed in the manner they may deem most conducive to the best interests of the holders of said trust certificates.

16. All the powers of the trustees may be exercised by a majority of their number. They may appoint from their own number an executive and other committees. A majority of each committee shall exercise all the powers which the trustees may confer upon such committee.

17. The trustees may employ and pay all such agents and attorneys as they may deem necessary in the management of said trust.

18. Each trustee shall be entitled to a salary for his services not exceeding $25,000 per annum, except the president of the board, who may be voted a salary not exceeding $30,000 per annum. Which salaries shall be fixed by said board of trustees. All salaries and expenses connected with or growing out of the trust shall be paid by the trustees from the trust fund.

19. The board of trustees shall have its principal office in the City of New York, unless changed by a vote of the trustees, at which office, or in some place of safe deposit in said city, the bonds and stock shall be kept. The trustees shall have power to adopt rules and regulations pertaining to the meetings of the board, the election of officers and the management of the trust.

20. The trustees shall render at each annual meeting a statement of the affairs of the trust. If a termination of the trust be agreed upon as hereinafter provided, or within a reasonable time prior to its termination by lapse of time, the trustees shall furnish to the holders of trust certificates a true and perfect inventory and appraisement of all stocks and other property held in trust, and a statement of the financial affairs of the various companies whose stocks are held in trust.

Life of the Trust.

21. This trust shall continue during the lives of the survivors and survivor of the trustee in this agreement named, and for twenty-one years thereafter; provided, however, that if at any time after the expiration of ten years two-thirds of all the holders in value, or if, after the expiration of one year 90 per cent. of all the holders in value of trust certificates shall, at a meeting of holders of trust certificates, called for that purpose, vote to terminate this trust at some time to be by them then and there fixed, the said trust shall terminate at the date so fixed. If the holders of trust certificates shall vote to terminate the trust as aforesaid, they may, at the regular meeting, or at a subsequent meeting called for that purpose, decide by a vote of two-thirds in value of their number, the mode in which the affairs of the trust shall be wound up, and whether the trust property shall be distributed, or whether it shall be sold, and

the values thereof distributed; or whether part, and if so, what part shall be divided, and what part shall be sold and whether such sale shall be public or private. The trustees who shall continue to hold their offices for that purpose shall make the distribution in the mode directed; or, if no mode be agreed upon, by two-thirds in value, as aforesaid, the trustees shall make distribution of the trust property according to law. But said distribution, however made, and whether it be of property or values, or of both, shall be just and equitable, and such as to insure to each owner of a trust certificate his due proportion of the trust property, or the value thereof.

22. If the trust shall be terminated by expiration of the time for which it is created, the distribution of the trust property shall be directed and made in the mode above provided.

23. This agreement, together with the registry of certificates, books of accounts and other books and papers connected with the business of said trust shall be safely kept at the principal office of said trustees.

BENJAMIN BREWSTER.
JOHN D. ARCHBOLD.
CHARLES PRATT.
HENRY H. ROGERS.
H. A. PRATT.
C. M. PRATT.
D. M. HARKNESS, *Trustee,*
By H. M. FLAGLER, *Attorney.*
THOMAS C. BUSHNELL.
W. C. ANDREWS.
CHAS. F. G. HEYE.
WILLIAM T. WARDWELL.
WM. H. MACY.
ESTATE JOSIAH MACY, JR.
WM. H. MACY, JR., *Ex.*
WM. H. MACY, JR.
A. M. McGREGOR.
J. N. CAMDEN,
By H. M. FLAGLER, *Attorney.*
O. H. PAYNE,
By H. M. FLAGLER, *Attorney.*
GEO. F. CHESTER, *Trustee.*
GEO. H. VILAS, *Trustee.*
W. G. WARDEN.
H. M. FLAGLER.
JOHN D. ROCKEFELLER.
WM. ROCKEFELLER.
J. J. VANDERGRIFT.
MRS. H. M. FLAGLER,
Per H. M. FLAGLER.
A. J. POUCH.
O. B. JENNINGS.
D. M. HARKNESS,
By H. M. FLAGLER, *Attorney.*

26

W. P. THOMPSON,
By H. M. FLAGLER, *Attorney.*
S. V. HARKNESS,
By H. M. FLAGLER, *Attorney.*
JOHN HUNTINGTON,
By H. M. FLAGLER, *Attorney.*
LIDE J. ARTER,
By H. M. FLAGLER, *Attorney.*
H. M. HANNA AND
GEO. W. CHAPIN,
By H. M. FLAGLER, *Attorney.*
LOUIS C. WHEATON,
By H. M. FLAGLER, *Attorney.*
O. H. PAYNE, *Trustee,*
By H. M. FLAGLER, *Attorney.*
CHARLES LOCKHART,
JOSEPH L. WARDEN,
By HENRY L. DAVIS, *Attorney.*
JULIA H. YORK,
By H. M. FLAGLER, *Attorney.*
H. A. HUTCHINS,
By H. M. FLAGLER, *Attorney.*
M. R. KEITH, *Trustee.*
D. BUSHNELL.
WARDEN, FREW & CO.
HENRY L. DAVIS.

27 EXHIBIT B.

The Agreement.

Whereas, in and by an agreement dated Jan. 2, 1882, and known as the Standard Trust agreement, the parties thereto did mutually covenant and agree, *inter alia* as follows, to-wit: "That corporations to be known as Standard Oil Companies, of various States, should be formed, and that all the property, real and personal, assets and business of each and all of the corporations and limited partnerships mentioned or embraced in class I of said agreement should be transferred to and vested in the said several Standard Oil Companies; that all the property, assets and business in or of each particular State should be transferred to and vested in the Standard Oil Company of that particular State, and the directors and managers of each and all of the several corporations and associations mentioned in class I were authorized and directed to sell, assign, transfer and convey and make over to the Standard Oil Company or Companies of the proper State or States as soon as said corporations were organized and ready to receive the same, all the property, real and personal, assets and business of said corporations or associations; and,

Whereas, it is not deemed expedient that all of the companies and associations mentioned should transfer their property to the

said Standard Oil Companies at the present time, and in case of some companies and associations it may never be deemed expedient that the said transfer should be made and said companies and associations go out of existence; and,

Whereas, it is deemed advisable that a discretionary power should be vested in the trustees as to when such transfer or transfers should take place, if at all. Now, it is hereby mutually agreed between the parties to the said trust agreement, and as supplementary
28 thereto that the trustees named in the said agreement and their successors shall have the power and authority to decide what companies shall convey their said property as in said agreement contemplated, and when the said sales and transfers shall take place, if at all, and until said trustees shall so decide, each of said companies shall remain in existence and retain its property and business, and the trustees shall hold the stocks thereof in trust as in said agreement provided. In the exercise of said discretion the trustees shall act by a majority of their number as provided in said trust agreement. All portions of said trust agreement relating to this subject shall be considered so changed as to be in harmony with this supplemental agreement.

In witness whereof, the said parties have subscribed this agreement, this 4th day of January, 1882.

BENJAMIN BREWSTER.
JOHN D. ARCHBOLD.
J. A. BOSTWICK.
CHARLES PRATT.
HENRY H. ROGERS.
H. A. PRATT.
C. M. PRATT.
D. M. HARKNESS, *Trustee.*
D. M. HARKNESS.
T. C. BUSHNELL.
W. C. ANDREWS.
CHARLES F. G. HEYE.
WILLIAM T. WARDWELL.
WILLIAM H. MACY.
ESTATE OF JOSIAH MACY, JR.
WILLIAM H. MACY, JR., *Executor.*
WILLIAM H. MACY, JR.
A. M. McGREGOR.
J. N. CAMDEN.
29 JULIA H. YORK,
By B. H. Y.
O. H. PAYNE.
GEORGE F. CHESTER, *Trustee.*
M. R. KEITH, *Trustee.*
H. M. FLAGLER.
JOHN D. ROCKEFELLER.
WILLIAM ROCKEFELLER.
J. J. VANDERGRIFT.

MRS. H. M. FLAGLER,
By H. M. FLAGLER.
A. J. POUCH.
O. B. JENNINGS.
W. O. THOMPSON.
S. V. HARKNESS.
JOHN HUNTINGTON.
LIKE K. ARTER.
H. M. HANNA.
GEORGE W. CHAPIN.
H. M. HANNA, *Attorney in Fact.*
LOUISE C. WHEATON,
By H. M. FLAGLER.
O. H. PAYNE, *Trustee.*
CHARLES LOCKHART.
JOSEPH L. WARDEN.
HENRY L. DAVIS.
W. G. WARDEN.
WARDEN, FREW & CO.
D. BUSHNELL.
H. A. HUTCHINS.
GEORGE H. VILAS, *Trustee.*

30 (3) That said defendant so entered into and became a party to the conspiracy then formed and carried out and observed and performed the same up *the* the present time; that all of the parties entering into same observed and carried out said contracts in other sections of the United States and the State of Texas.

That each of the corporations mentioned in said trust agreement and each of the individuals mentioned therein or signing same entered into and became a party to the conspiracy and conspiracies hereinbefore detailed and described and said companies and persons have participated in and been parties to the schemes and devices that have since been used to carry out the purposes intended to be accomplished by said trust agreement, and have been parties to the conspiracies to accomplish such purposes, and defendant and all of its officers and stockholders have ever since its incorporation participated in such conspiracies and aided in carrying out the purposes and schemes set forth in said agreement and intended to be accomplished by it.

(4) That the stock owned and held in the names of Chess-Carley Company and the Standard Oil Company was transferred by defendant's transferring officer upon defendant's stock books to the certain nine trustees who were appointed and named in the first one of said trust agreements upon the request of the respective owners of said shares and in prusuance of the provisions of said trust agreements.

(5) That thereafter on or about the 13th day of June, A. D. 1882, said defendant, Waters-Pierce Oil Company increased its capital stock from $100,000 to the aggregate amount of $400,000 capital; that said increase- capital of $300,000 was divided into

3,000 shares of $100 each, the certificates of stock being issued as follows:

31	Chess-Corley Company, 600 Shares	$60,000
	William H. Waters, 1200 Shares	120,000
	Trustees of Standard Oil Trust, 1200 Shares	120,000

That said corporation, through its proper officers, issued said 1200 additional shares of the capital stock to the trustees of the Standard Oil Trust as above stated, and that by virtue of so holding and controlling said shares, together with such shares as had been formerly acquired by it, said nine trustees were, after the signing of said agreements, able to choose, and did annually choose, such boards of directors of defendant company as they (the said nine trustees) saw fit, and were able to and did control the actions of the defendant in the conduct and management of its business up to the time of the dissolution of the Standard Oil Trust and the adoption of another scheme for the transaction of the business of the Standard Oil Trust, which was afterwards adopted and enforced as hereinafter set out.

(6) That Waters-Pierce Oil Co., has never taken any corporate action or made any complaint against its stockholders or its directors, and officers signing and entering into said trust agreement, or being controlled under said agreement, or either of them, nor against its said stock holders or officers surrendering their stock in the said company to said nine trustees, nor against its stockholders or officers or directors receiving the Standard Oil Trust Certificates which were issued and delivered to them as aforesaid, by said nine trustees, in exchange for its stock, nor against any of the acts herein recited, and that none of the officers, directors or stockholders of said company have at any time objected or made complaint against such surrender and exchange of stock or against any of said recited acts, but, on the contrary said company, in its corporate capacity, has, and
32 all of its officers and stockholders have, ever since the acts in question acquiesced in such transfer and exchange, and in the annual election of said nine trustees and the directors for said Waters-Pierce Oil Co., as well as in all of said recited acts; that the directors of said company, chosen in the manner aforesaid, either directly or through their employees, managed the business of that company so as to conform to the instructions issued from time to time by the said nine trustees aforesaid, and since the nominal change in the instructions of the managers of the Standard Oil Company.

(7) That the net earnings of the said Waters Pierce Oil Company were, after the signing of said agreement, declared and paid out as dividends upon its capital stock; that the nine trustees appointed under said trust agreements, as aforesaid, received up to the dissolution of the Standard Oil Trust the proportions of such dividends which were properly distributed and payable upon the stock held by said nine trustees in said company; that there were besides those set forth in the trust agreement, a large number of other corporations (plaintiff being unable to ascertain or state the number) in the United States whose organizations were made, stockholders and directors elected, and whose affairs and business and dividends were conducted and paid under and pursuant to the provisions of the

Trust agreements hereinbefore set forth, in a manner similar to that herein described in respect to said Waters-Pierce Oil Company, and from the dividends so accumulated in the hands of said nine trustees, dividends were from time to time, as the interests of the trust justified, declared and paid out by said nine trustees to the holders of said Standard Oil Trust certificates which had been issued to them.

(8) That said board of trustees of said Standard Oil Trust controlled managed and directed the business affairs of said company without protest or resistance on the part of said Company, but, on the contrary, with its sanction and acquiescence and the
33 consent and co-operation of all its stockholders up until March 2nd, 1892, when said Standard Oil Trust and its subsidiary corporations were ousted from the State of Ohio by a judgment of the Supreme Court of Ohio at which time said Standard Oil Trust voted to go into voluntary dissolution.

(9) That at the time of said reputed dissolution the Standard Oil Company of New Jersey, one of the subsidiary corporations owned and controlled by the Standard Oil Trust aforesaid, took over the entire holdings of stock, including that in the Waters Pierce Oil Company theretofore held by said nine trustees of the said Standard Oil Trust, and thereafter and up to this time the said Standard Oil Company of New Jersey (name subsequently changed to Standard Oil Company) performed the functions in carrying the conspiracies, contracts, agreements and understandings aforesaid that had primarily been performed by the Standard Oil Company of Ohio, and later by the said Standard Oil Trust, into effect and execution, and have continually up to this time managed, controlled, directed and dominated the business affairs of all the persons, firms and corporations, including defendant, originally entering into said trust agreements aforesaid, and have since from time to time, created, formed and acquired new corporations in different sections of the United States to carry on its said business in conformity to said conspiracies and agreements as hereinbefore set out; that since 1892 contin-ously each and every day up to this time the Standard Oil Company has owned and controlled a majority of the capital stock of the Waters-Pierce Oil Company, directed its affairs, limited its operations without protest of said corporation, or any corporate action on the part of defendant resisting said control, but, on the contrary, at all times with its sanction, acquiescence and hearty co-operation, and with the knowledge and consent of all its stockholders.

34 (10) That the affairs of the Waters Pierce Oil Company were thereafter controlled, managed and directed by the said Standard Oil Company; that said Standard Oil Company received the 2750 shares of the capital stock of said corporation theretofore held by the Standard Oil Trust as aforesaid; that all of the conspiracies, contracts, agreements and understandings made, entered into and effected between said defendant company and the Standard Oil Company of Ohio and the Standard Oil Trust and its allied interests and subsidiary corporations and the oil concerns and corporations named with trust agreement aforesaid, were continued in full force and effect and were observed each and every day thereafter between the Standard Oil Company and the corporations controlled by

it and the Waters-Pierce Oil Company, and have been continuously so observed by all of said parties, including the defendant, from the date of its organization, down to the present time.

V.

That prior to the 6th day of July, A. D. 1889, and continuously thereafter up to and including May 31st, 1900, the Waters-Pierce Oil Company, did business in the State of Texas, having filed with the Secretary of State of the State of Texas, in accordance with the requirements of law a certified copy of its articles of incorporation, and secured a permit to transact business in the State. By virtue of the permit granted by the State of Texas to said corporation it engaged in business in the State, established itself in every county through out the state and transacted business in the State of Texas, and while so engaged violated the statutes of the State of Texas against illegal combinations in restraint of competition in trade and thereby incurred a forfeiture of its permit to do business in the State. Suit was filed by the State of Texas in the District Court of Travis County, Texas, for the cancellation of said permit; upon trial a verdict was rendered against the company and judgment was duly en-
35 tered cancelling said permit. The judgment was affirmed by the Court of Civil Appeals of Texas, a writ of error denied by the Supreme Court of Texas, and a writ of error was granted by the Supreme Court of the United States to the Court of Civil Appeals of the Third Supreme Judicial District of Texas, bringing the case before the Supreme Court, by which Court said judgments were affirmed March 19th, 1900, cancelling the permit of said defendant to transact any business except an interstate business in the State of Texas, and an injunction issued restraining said corporation from any further transaction of business within this State.

(2) That through an agreement with the Attorney General of the State of Texas, said corporation was granted until the 31st day of May, 1900, in which to wind up its business affairs and to withdraw from the State of Texas.

(3) That in further pursuance of the conspiracy aforesaid and for the purpose of maintaining the monopoly and control which had been acquired by the conspirators aforesaid through the operations of the Waters Pierce Oil Company in the State of Texas, and for the purpose of defrauding the State of Texas, and for the purpose of fraudulently rendering ineffective the judgments of the Courts of the State of Texas and of the United States, the manager, officers and agents of the Standard Oil Company, the Waters-Pierce Oil Company, and its officers, and H. C. Pierce and the other conspirators hereinbefore mentioned, determined to go through the form of dissolving the corporation known as the Waters Pierce Oil Company, and of creating a new corporation for the holding of property and the transaction of the business of the Waters-Pierce Oil Company and carrying out the plans and conspiracies aforesaid.

(4) That a paper was prepared certifying that the stockholders of the Waters-Pierce Oil Company had voted to dissolve
36 said corporation, which papers was filed with the Secretary of State of Missouri, May 29th, 1900, and another charter

was taken out by the old stockholders, giving the same name, the same capital stock, and the purposes, and being in fact the same corporation.

(5) Plaintiff alleges that the Waters-Pierce Oil Co. was not dissolved in accordance with the statutes and laws of the State of Missouri.

That said laws governing such corporations provide in effect that if the corporation be insolvent a majority of its stockholders, or the directors of the corporation, and if the corporation be not insolvent then the stockholders holding at least two-thirds of its shares may pass a resolution favoring dissolution; that after the passage of said resolution such corporation may be dissolved by a judgment of the Circuit Court of the County in which its principal office is located, and if such office be in the City of St. Louis, such judgment of dismissal may be rendered by either of the circuit courts of the Eighth Judicial Circuit; that before such dissolution by judgment of a Court can be had an application shall be filed by a petition, verified by the president and secretary, or by a majority of the directors of the corporation, setting forth a clear and concise statement of the reasons which induce the stockholders to desire a dissolution of the corporation; that among other things said petition shall contain a full and true inventory of all the estate, real and personal, in law and equity, of such corporation, and all books, vouchers and securities relating thereto, also a full and true account of the capital stock of such corporation, specifying the names of the stockholders, their residences, the number of shares belonging to each, the amount paid in upon said shares, and the amount due thereon; also all incumbrances on the property of such cor-
37 poration by judgment, mortgage, pledge or otherwise; a list of all creditors of such corporation, and all *all* engagements entered into by said corporation, not fully satisfied or cancelled. That upon filing of such petition an order shall be made by the Court, if filed in term time, or by the Clerk, if filed in vacation, requiring all persons interested in such corporation to show cause, if any they have, why such corporation should not be dissolved, on or before a day or term of said Court therein named; that the several officers and stockholders may enter their voluntary appearance and all stock holders and creditors and persons having unexecuted contracts with said corporation, who do not enter their voluntary appearance, shall be notified by *by* summon under the hand and seal of the clerk of the Court, reciting the filing of said petition, its general purport and nature, and citing them to appear in said Court on a day to be named in said writ to show cause, if any they have, against said dissolution; that such day shall be fixed at not less than twenty one days nor more than thirty days after the filing of said petition; that in addition to said summons a notice of a general nature and cause of said application shall be published in some newspapers of general circulation in the county in which said proceeding in commenced for three weeks consecutively, and proof of service and publication aforesaid shall be made before any order is made upon said petition; that the court shall have the power

to continue such application for service upon all interested parties from time to time and to issue new writs, if necessary, according to the practice therein. That if, upon a hearing of such application the court shall be satisfied that the prayer of such petition can be granted without prejudice to the public welfare, or the interest of the corporation, the creditors or incorporators of such corporation,

38 if may enter a judgment or decree dissolving such corporation, and directing the president and directors to take charge of its assets and administer them as now provided by law; that whenever the Court shall grant a judgment of dissolution, the clerk thereof shall send a certified copy of the order of the Court to the Secretary of State and said copy shall be filed with the incorporation papers of said company. That the president or secretary of every domestic incorporated company in said State, when it shall dissolve, is required to file with the Secretary of State thereof an affidavit to that effect, and for any failure to comply with such provisions the said company or its officers are subject to a penalty of from fifty to five hundred dollars; that the mere retirement from business of a domestic corporation without dissolution shall not exempt it from the requirement to make said reports.

That the laws of the State of Missouri, governing the manner of dissolution of corporations such as defendant, the substance of which have been hereinbefore stated are contained in the Revised Statutes of Missouri, (1889) and that Sections 976, 977, 978, 979, 980, 981, and 1018 especially apply and control the dissolution of such corporations in this State. That said Statutes constitute the only way in which a corporation such as defendant company or the old Waters Pierce Oil Company as aforesaid could be dissolved in that State so as to affect the rights of others, and said Waters Pierce Oil Company did not comply with said laws in undertaking to dissolve, nor did its stockholders or officers do so, nor was said corporation otherwise legally dissolved under the laws of said State.

(5) At the time of the alleged dissolution the stock of the Waters Pierce Oil Company was owned as follows:

By H. C. Pierce, 1250 shares;

By the Standard Oil Company of New Jersey, 2750 shares;

39 One of the shares of H. C. Pierce was held in the name of Andrew M. Finlay in order that he might be eligible for membership on the board of directors in said Pierce's behalf, and C. M. Adams and J. P. Gruet held each a certificate of the stock of the Standard Oil Company of New Jersey for one share that they might be representatives of the Standard Oil Company's interest on the board of directors. Prior to the reputed reorganization the following persons, named by the Standard Oil Company and H. C. Pierce, were members of the board of directors; H. C. Pierce, J. P. Gruet, H. M. Tilford, A. M. Finlay and C. M. Adams.

In the charter issued May 29th, 1900, said Standard Oil Company and H. C. Pierce substituted the name of J. D. Johnson, Attorney for the defendant for that of H. M. Tilford, leaving the directors otherwise the same. That of the new stock, as of the old, H. C. Pierce was to own 1250 shares and the Standard Oil Com-

pany of New Jersey was to own 2750 shares, all of which was effected.

That the actions taken by the Standard Oil Company and H. C. Pierce were subsequently, at their direction, confirmed by themselves and their employees and agents constituting the board of directors of the Waters Pierce Oil Company and by defendant herein. That the difference between the assets and liabilities of the Waters Pierce Oil Company was determined and a nominal liquidation was accomplished by giving to the stockholders (the said Pierce and the Standard Oil Company of New Jersey) notes for the amounts thus determined in proportion to interests in the stock. That until said notes were discharged the profits were not paid in the form of dividends but were used to discharge the obligations nominally due the stockholders.

(8) That for the nominal capital stock of the Waters
40 Pierce Oil Company under the new charter the check of H. C. Pierce was given for $400,000; that at the time of the alleged dissolution the company had in cash more than $400,000 which sum was nominally paid to the stockholders as a dividend of the old company and afterwards returned to the new company for the discharge of said $400,000 capital stock of the new company; that said H. C. Pierce was reimbursed by the Standard Oil Company for the entire amount of money advanced by H. C. Pierce in his check of $400,000; that said check was given by H. C. Pierce in order to deceive the public and cover up the real transaction and fraud perpetrated upon the State of Texas as hereinbefore alleged.

That the said H. C. Pierce understood at the time of said reorganization, and acted upon the understanding with the Standard Oil Company that the 2750 shares theretofore owned by the Standard Oil Company should be by him transferred to said Standard Oil Company immediately after said fraudulent reorganization, and in pursuance of said agreement and understanding, the 2750 shares aforesaid, of the alleged new incorporation, were endorsed in blank by said H. C. Pierce and placed under the control of the Standard Oil Company; that said 2750 shares remained upon the Stock Books of said corporation in the name of H. C. Pierce until June 1904, with the exception of two shares which were held by C. M. Adams and J. P. Gruet as the representatives of the Standard Oil Company's interest in the directorate of the defendant company.

(9) That during the period of time between May 29th, 1900, and June 1904, the period in which the stock belonging to the Standard Oil Company stood in the name of H. C. Pierce, said H. C. Pierce in order to deceive the public and cover up the fraudulent character of said transactions, and in order to secrete the true ownership of said 2750 shares, collected from defendant corpo-
41 ration all dividends paid by said defendant corporation both on the 1250 shares owned by himself and 2748 shares owned by the Standard Oil Company of New Jersey standing in the name of H. C. Pierce.

That upon receipt of dividend checks as aforesaid, the said H. C. Pierce with the knowledge and sanction of defendant corporation

and its officers and all its stockholders, transmitted to the Standard Oil Company, through its proper representative, the dividends collected by H. C. Pierce, and owned by said Standard Oil Company (of New Jersey);

(10) That in June, 1904, the said 2748 shares of stock was transferred on the books of defendant from H. C. Pierce to M. M. Van Buren, a son-in-law of John D. Archbold, said Archbold being an officer of the Standard Oil Company; said Van Buren has since 1904 held said stock in his name without consideration for the benefit of the Standard Oil Company.

That all of the aforesaid acts and conspiracies and fraudulent transactions were effected and enforced with the full knowledge and sanction of the defendant corporation and all its stockholders and by said stockholders and for the purposes aforesaid.

(11) That the conduct of the business of defendant Waters Pierce Oil Company was in no sense changed by or after the nominal reorganization; that the same office, books and equipment were kept as they had been before kept and by the same persons; that the employees were the same; that no difference or changes were made in the employees or representatives; that the same property, appliances and methods were used as before; that the same accounts were kept with the same persons; that the same reports were made to the Standard Oil Company, and the same instructions were received from it, and the same control exercised by it as before the alleged reorganization; that the old contract and understanding and agreement about the division of territory was maintained and respected and enforced; the same salaries were paid to the same persons, and in no respect, in name or otherwise, was the Waters-Pierce Oil Company or its business different or changed after May 29th, 1900, from what it had been before that date, except as here now indicated:

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(12) That the sole purpose of the reputed and nominal reorganization was to perpetrate a fraud upon the State of Texas and to enable the company to maintain its business and get the benefit of and maintain its monopoly in the State of Texas; that said purposes have been and are being accomplished.

(13) That after the judgment in the case aforesaid of State of Texas *vs.* Waters-Pierce Oil Company and prior to the reorganization aforesaid, it was agreed and understood by and between the Standard Oil Co. and its officers and managers and H. C. Pierce that in pursuance of the conspiracies and the purpose herein stated the latter, who had theretofore been removed from the Presidency of the Waters Pierce Oil Co. by the said other parties, should be restored thereto, and it was agreed and understood that he would proceed to the State of Texas, and take such steps as might be necessary to obviate and defeat the effect of the judgment aforesaid and to dispose of a case then pending in the District Court of McLennan Co. wherein the State of Texas was Plaintiff and the Waters-Pierce Oil Co. was defendant, wherein the State was suing for penalties for a violation of the laws of Texas; that in pursuance of this agreement and understanding, H. C. Pierce, acting for said Waters Pierce Oil

Co. and all the stockholders, directors, and officers of the Waters Pierce Oil Co. arranged with and employed attorneys, and with them went into the State of Texas, made an effort to dispose of the case pending at Waco and expended money therein and consulted with officers of the State with reference to the readmission of the
43 Waters Pierce Oil Co. into the State; that a course of procedure was determined upon, which was carried out as hereinbefore stated; that all sums of money paid and contracted to be paid by said Pierce were paid by the Waters Pierce Oil Co. after the reputed reorganization and all the expenses incident to the said operations of Pierce and the attorneys aforesaid in Texas were so paid, and all of said expenses were thereafter audited and allowed by the Standard Oil Co.

(14) That all the expenses incurred in the case aforesaid, pending in the District Court of McLennan County until its final disposition were discharged by defendant.

VI.

That contemporaneously with the reputed reorganization aforesaid and as a part of the general plan and scheme determined upon to monopolize the oil business in the State of Texas, H. C. Pierce, as President of Waters-Pierce Oil Company filed an affidavit with the Secretary of State of Texas, as hereinafter set out; the affidavit aforesaid made by said H. C. Pierce, as aforesaid, is as follows:

Affidavit.

THE STATE OF TEXAS, *County of Travis:*

I, Henry Clay Pierce, do solemnly swear that I am the President (President, Secretary, Treasurer, or Director) of the corporation known and styled Waters-Pierce Oil Company, duly incorporated under the laws of Missouri on the 29th day of May, 1900, and now transacting or conducting business in the State of Texas, and that I am duly authorized to represent said corporation in making
44 this affidavit, and I do further solemnly swear that the said Waters-Pierce Oil Company, known and styled as aforesaid, has not since the 31st day of January, 1900, created, entered into or become a member of or a party to, and was not, on the 31st day of January, 1900, nor at any day since that date, and is not now a member of or any party to any pool, trust, agreement, combination, confederation or understanding, with any other corporation, partnership, individual, or any other person, or association of persons, to regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado, or any other kind of policy issued by the parties aforesaid; and that it has not entered into or become a member of, or a party to, any pool, trust, agreement, contract, combination or confederation, to fix or limit the amount of supply or quan-

tity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, or any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning storm, cyclone, tornado, or any other kind of policy issued by the parties aforesaid, and that it has not issued, and does not own any trust certificates for any corporation, agent, officer, or employee, or for the directors or stockholders or any corporation, has not entered into and is not now in any combination, contract, or agreement with any person or persons, corporation or corporations, or with any stockholders or directors thereof, the purpose and effect of which said combination, contract or agreement would be to place the management or control of such combination or combinations, or the manufactured
45 product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price, or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict, or diminish the manufacture or output of any such article; that it has not entered into any conspiracy, defined in the preceding sections of this act, to form or secure a trust or monopoly in restraint of trade; that it has not been since January 31st, A. D. 1900, and is not now a monopoly by reason of any conduct on its part which would constitute it a monopoly under the provisions of sections 2, 3, 4, 5, 6, 10, and 11 of this Act, and is not the owner or lessee of a patent to any machinery intended, used or designed for manufacturing any raw material or preparing the same for market by any wrapping, baling or other process, and while leasing, renting or operating the same refuses or fails to put the same on the market for sale; that it has not issued and does not own any trust certificates and has not, for any corporation or any agent, officer or employé thereof, or for the directors or stockholders thereof, entered into, and is not now in any combination, contract or agreement with any person or persons, corporation or corporations, or with the stockholders, directors or officers, agent or employee of any corporation, or corporations, the purpose and effect of which combination, contract or agreement, would be a conspiracy to defraud, as defined in Section 1 of this Act, or to create a monopoly, as defined in sections 2, 3, 4, 5, 6, 10, and 11 of this Act.

HENRY CLAY PIERCE,
President, Secretary, Treasurer or Director.

(2) That the Secretary of State of the State of Texas granted the permit dated May 31st, 1900; that all of said representations made by said H. C. Pierce in said affidavit, were false and fradulent and known by him to be false and fraudulent at the time they
46 were made, and were made by him for the purpose of deceiving the officers of the State of avoiding the judgment aforesaid, and in pursuance and furtherance of the conspiracies hereinbefore alleged.

(3) That at the time of the making of the affidavit and the issuance of the permit above set forth 2750 of the 4,000 shares of the said defendant company were owned, held and controlled by the

Standard Oil Company of New Jersey, a corporation doing the same character of business as the Waters-Pierce Oil Company. The management and control of the defendant company was directed and has continued to be directed up to this time by persons and corporations controlling and directing the Standard Oil Company, and a large number of other corporations who, in violation of law, were controlling and monopolizing the oil business of the United States, including the State of Texas, and fixing and controlling the price of oil and the products of petroleum.

(4) That the Waters-Pierce Oil Company and said Standard Oil Company were maintaining a monopoly of the oil business in the State of Texas and maintaining and fixing and controlling the price of oil and products of petroleum in said State, and preventing competition therein; that all parts of said affidavit were false and untrue, and were made for the purpose of evading the laws of Texas and of committing a fraud upon said State and maintaining the monopoly herein alleged and the carrying out of the conspiracies entered into between defendant and the Standard Oil Company, and the other conspiracies herein named.

VII.

That by and through the machinery hereinbefore described and in pursuance of the conspiracy to monopolize the entire oil business the conspirators herein named have in addition to the cor-
47 porations, concerns and businesses herein specifically named and a large number of others the names of which cannot be ascertained, taken over and acquired the following companies and businesses:

The Consolidated Tank Line Company.
The Missouri, Kansas & Texas Tank Line.
The Chess-Carley Company.
Shurmer, Teagle & Co.
The Cleveland Refining Co.
The Scio Refining Co.
Scofield, Shurmer & Teagle.
The Republic Oil Company.
The Vacuum Oil Company.

That said businesses and companies were acquired for the purpose of destroying competition, and were especially acquired to prevent competition with the Waters Pierce Oil Company, and has had that effect; and said companies have either been put entirely out of business, or are being so controlled as to aid in the scheme of monopoly; and the defendant was a party to said acquisition for said purpose, and now participates in and is a party to the arrangement, which prevents competition from said companies, and has been ever since its incorporation.

VIII.

That there is maintained at 26 Broadway, New York, an organization of which W. H. Tilford, L. D. Clarke, Silas G. Payne,

John D. Rockefeller, C. M. Pratt, F. G. Barstow, Wade Hampton, R. H. McNall, H. M. Tilford, W. E. Bemis, S. C. T. Todd, H. C. Arnold, R. P. Tinsley, E. T. Bedford, M. F. Elliott, Henry M. Flagler, John D. Archbold, H. H. Rogers, Ealter C. Teagle, James A. Moffatt, W. P. Cowan, Geo. B. Wilson, Jas. R. Taylor, Charles L. Nichols, Walter Jennings, Howard Page, E. T. Wilson, L. J.
48 Drake, one O'Connor, and other persons whose names cannot be ascertained by plaintiff (all of said persons being parties to the conspiracies herein set out), who have succeeded in bringing under their direction and control, and are now controlling a large number of corporations engaged in the business of buying and selling oil and other products of petroleum, who but for this control would be competing companies for such business, and who could and would be competing companies for that business in the State of Texas. That some of the companies controlled by said organization and said persons are the following:

The Standard Oil Company of Indiana.
The Standard Oil Company of Ohio.
The Standard Oil Company of Kentucky.
The Republic Oil Company.
The Continental Oil Company.
The Waters Pierce Oil Company.
The Standard Oil Company of Iowa.

And said organization has secured control of a large number of other oil buying and selling companies, the names of which plaintiff has been unable to ascertain. That said organization and said persons also control a number of oil refineries, among which are the refineries at Whiting, Indiana, Neodesha, Kansas, Corsicana, Texas, and Beaumont, Texas, and Franklin, Pa. They are also in control of the Union Tank Line Company. That all of said companies, including the defendant, are controlled by said organization, and persons with the acquiescence and consent of said companies, and with the consent of defendant company and all of its officer- and stockholders. That by this control all competition between said companies, is destroyed, and especially all competition between said companies in the State of Texas is destroyed; that certain sections and parts of the United States are assigned to said companies
49 for business; that the Waters Pierce Oil Company is permitted to do business in Texas, and with its knowledge and consent and upon its insistence and demand all other companies under said control are excluded from Texas. That by reason of said control said companies, including defendant, are required (and defendant acquiesces in and agrees to the arrangement) to secure all the oil used and sold by them from such refineries, and at such prices as are determined by that organization and said persons, whereby a monopoly in the selling of oil is accomplished, and defendant is excluded (with its consent) from buying oil from refineries not controlled by said organization, and thereby the price is *is* affected and increased; that by said control a number of corporations are brought under one management and said consolidation and affiliation is made for the purpose of and has the effect of monopolization,

controlling and effecting the business in oil and the products of petroleum in Texas, and effecting the prices in said State of said products.

That since the reputed reorganization of the Waters Pierce Oil Company under the charter dated May 29th, 1900, said Company operating under said charter, has repeatedly and continuously violated the laws of the State of Texas in the following particulars and respects:

(2) That the organization primarily incorporated as the Standard Oil Company of Ohio, and which subsequently became merged in the Standard Oil Trust aforesaid, and the Standard Oil Company, another member of said trust, together with the corporations control-ed by it, is domiciled at 26 Broadway, in the City of New York; Through the several corporations is has acquired it controls substantially all the oil business of the United States, including the State of Texas. The United States is parceled out at its pleas-
50 ure to the several corporations under its control for the sale of refined oil, all competition between them being destroyed, and the other branches of the oil business, such as producing and refining oils are handled by the Standard Oil Company directly or through other corporations;

(3) That the connection between the Standard Oil Companies and the Waters Pierce Oil Company has been hereinbefore detailed; that the Standard Oil Company secured control of the company upon its organization, and has exercised control at all times, except when prudential or political reasons rendered it advisable for H. C. Pierce, the other stockholder, to actually or nominally control, and that all this was done with the sanction and acquiescence of defendant and all of its stockholders.

(4) That in carrying out the unlawful agreements hereinbefore detailed, H. C. Pierce, and the managers of the Standard Oil Company have frequently come in conflict; but in all things looking to the complete monopolization of the oil business and the fixing and maintaining prices destroying competition, all of said stockholders and each of said companies have acted in absolute harmony, and said Pierce has never taken any step to protect the company from the unlawful control of the other company, but the acquisition of that control was with the concurrence of said Pierce.

(5) That the division of territory previously agreed upon whereby the business operations of the Waters Pierce Oil Company should be confined to the territory hereinbefore named and whereby neither the Standard Oil Company nor any of the companies under its control (other than the Waters Pierce Oil Company) should sell refined oil and the products of petroleum therein has been insisted upon by the Waters Pierce Oil Company since May 31st, 1900, as before, and has been acquiesced in by said Standard Oil Company and its allied interests and subsidiary corporations
51 under its control and all the oil companies and concerns named in the trust agreement hereinbefore set out all of whom are engaged in the same business as defendant, and has been observed by said Standard Oil Company (except in so far as it may

have secretly and surreptitiously operated in said territory); that during that period said Waters Pierce Oil Company has by and in the State of Texas, through its officers, agents and employees, and through all of its stockholders of said defendant company maintained and undertaken to enforce and has enforced an agreement, understanding and conspiracy which has precluded and prevented other corporations engaged in the sale of oil and its products, from selling oil in said territory, and has thereby maintained and controlled the price of oil and its products and established and maintained a monopoly, and said agreement and said monopoly so established from the time of the organization of the Waters Pierce Oil Company has been maintained by defendant from May 29, 1900.

(6) That the organization of the business at 26 Broadway, New York, of the Standard Oil Company, and its subsidiary companies, consists of a number of persons (all engaged in the conspiracy herein set up) constituting a committee of which one H. M. Tilford was a member; that each of said persons constituting such committee has imposed upon him the particular duty of looking after some one or more of the divisions of the territory of the United States, including the State of Texas, and of the corporations assigned or permitted to do business in that territory; that the general policy of the concern is determined by the members of this committee in conference; that the individual to whom the reports of the operations of the Waters Pierce Oil Company, defendant, were made prior to the putative reorganization was H. M. Tilford, and that instructions as to prices, expenses and the conduct of the business were signed by him or under his direction.

52 That after May 31st, 1900, the Standard Oil Company placed upon the pay roll of Waters Pierce Oil Company one R. H. McNall under the designation of "Commercial Agent," and named his place of business as 75 New Street (which is the back door of the building known as 26 Broadway); that said McNall had been and thereafter continued to be a clerk in the office and under the control of H. M. Tilford. The duty performed by him with reference to the business of defendant was to permit the reports required by the Standard Oil Company of defendant to be addressed to him and to sign the letters of instructions as prepared by the officers of the Standard Oil Company and forward them to the Waters Pierce Oil Company, and the nominal change thus made in the business of the corporation was made for the purpose of rendering more difficult a discovery of the falsity of the affidavit of said H. C. Pierce, and of more efficiently hiding the unlawful character of the business carried on by the defendant and the Standard Oil Company and its allied interests, and carrying out the objects of the conspiracy herein set out.

(7) That in addition to other methods of control and supervision, as herein detailed, the Standard Oil Company has continuously since May 31st, 1900, sent auditors in its own employ to the general officers of the defendant Waters Pierce Oil Company and checked up the books and accounts of the Waters Pierce Oil Company, and made reports thereof to the Standard Oil Company showing every detail of the business of the defendant company; that all of this was done

with the knowledge, sanction and acquiescence of the defendant corporation, and that in order and for the purpose of rendering more difficult the discovery of the falsity of said affidavit of said H. C. Pierce and of concealing the unlawful combination and conspiracy between the defendant and other parties, the auditors sent to
53 St. Louis by the Standard Oil Company were upon its order placed upon the pay roll of the Waters Pierce Oil Company as employees of the defendant Waters Pierce Oil Company; that these auditors were sent to St. Louis at the will and pleasure of the Standard Oil Company in which said action the defendant Waters Pierce Oil Company and all its stockholders had at all times acquiesced.

(8) That since May 29th, 1900, by reason of the ownership and control of 2750 shares of the capital stock of the Waters Pierce Oil Company by the Standard Oil Company, fraudulently and ficticiously held in the name of H. C. Pierce and M. M. Van Beuren, as hereinbefore alleged, the said Standard Oil Company has at all times since that date controlled the said defendant with its sanction and acquiescence and the consent of all its stockholders, as it did prior to that time.

(9) That since May 28th, 1900, as before, the agreement which had theretofore been entered into by and between the Standard Oil Company and H. C. Pierce and the Waters Pierce Oil Company, that the Waters Pierce Oil Company, defendant, should not buy refined oil or other products of petroleum except from the Standard Oil Company, or corporations designated by said company, has been carried out and acted upon by said companies in the State of Texas, and said Waters Pierce Oil Company has thereby been prevented from buying oil and the products of petroleum from refineries in Texas other than those owned and controlled by the Standard Oil Company; that the agreements and conspiracies herein alleged have been enforced and observed by the defendant company and the Standard Oil Company and all the corporations engaged in producing and refining petroleum in the State of Texas controlled by said Standard Oil Company.

That the Standard Oil Company owns and controls the Corsicana Refinery located at Corsicana, Texas, and the Security
54 Oil Company located at Beaumont, Texas, and other refineries in Texas, the names of which are unknown to plaintiff. That said Corsicana Refinery and Security Oil Company are refiners in this State of crude petroleum. That under the terms of the agreement and understanding hereinbefore referred to and is being acted upon and carried out by defendant the Standard Oil Company and its allied and subsidiary corporations said refineries have not been permitted and have not sold their products in the State of Texas to any company operating in said State and engaged in the sale of oil and the products of petroleum other than the defendant company and the agreement and understanding aforesaid has in this respect been acted upon and carried out since the establishment of said refineries and up to the present time.

That under the terms of said agreement and understanding acted upon by said defendant and the Standard Oil Company and its allied

and subsidiary corporations the price at which said defendant buys oil and the products of petroleum is fixed and controlled by the Standard Oil Company, and has been so fixed and controlled at all times since the making of said agreement, and thereby defendant is prevented from buying at a lower or different price than that fixed by the Standard Oil Company and the price of petroleum is thereby effected and controlled.

That since May 31st, 1900, as before, the Waters Pierce Oil Company has observed and operated under an agreement or understanding with the Standard Oil Company and the corporations controlled by it that it would not sell any oil to ships at any port of Texas upon its own account.

That since May 31st, 1900, as before, and continuously and each day since the Waters Pierce Oil Company, for the purpose of carrying out the objects of the conspiracies aforesaid and of securing a monopoly of the oil business in Texas and of destroying
55 all competition therein and of exacting from the people of Texas unreasonable and unconscionable prices for oil and the products of petroleum, has, as set forth in the succeeding paragraphs, bought out competing businesses, has maintained at a number of points oil selling concerns apparently in opposition to it, has made exclusive contracts with merchants by which they were prevented from handling the products of other companies, have cut prices below the costs of oil until competition was destroyed and then recouped by extraordinary increase of prices, has given rebates, gratuities and bribes, has, in connection with the Standard Oil Company, maintained a system of spies, has corrupted the employees of railroads and other concerns; that the methods here i-dicated have and do constitute the course of business of defendant.

That in pursuance and furtherance of the conspiracies hereinbefore alleged, and for the purpose of creating and maintaining a monopoly in the business of refining and selling of refined oils and all the products of petroleum, and for the purpose of destroying all competition between the Waters Pierce Oil Company and all other persons, firms and corporations doing business in the State of Texas in competition with said Waters Pierce Oil Company, plaintiff says that the Waters Pierce Oil Company hereinbefore referred to, bought out competing businesses, doing business in the State of Texas in competition with said Waters Pierce Oil Company, and did maintain at a number of points oil selling concerns apparently in opposition to it, in this, to-wit:

That it entered into the contracts and agreements attached hereto and marked Exhibit "C" for identification, and made a part of this petition, with the persons and corporations named in said contracts and agreements, and for the accomplishment of the purposes
56 therein set forth; and all of said contracts and agreements were enforced and carried out by said Waters Pierce Oil Company and the other persons, firms and corporations parties thereto; that it entered into exclusive contracts with the Eagle Refining Company, W. M. K. Rose, W. A. Smith, C. A. Carpenter, and A. W. Clem, binding the company and each of said individuals not to engage in business in Missouri, Arkansas, Texas, Louisiana west of the

Mississippi, Oklahoma and Indian Territory, or Mexico, for a period of fifteen years; that upon the reputed reorganization of the Waters Pierce Oil Company, defendant, on May 29, 1900, it assumed, ratified and carried out, and in all things enforced said contracts and agreements up to the present time.

That the Waters Pierce Oil Company for the purposes aforesaid, in the year 1896 bought out the business of the Texas Oil and Gasoline Company and of one Roy Campbell, doing business in the City of San Antonio and elsewhere in the State of Texas, and entered into contracts and agreements with the Texas Oil and Gasoline Company and said Roy Campbell whereby said Texas Oil and Gasoline Company was thereafter operated under said name as a competing concern of the Waters Pierce Oil Company, by the Waters Pierce Oil Company, aforesaid; that it was so operated by said Waters Pierce Oil Company until May 29th, 1900; that upon the reorganization and incorporation of the Waters Pierce Oil Company, defendant, on May 29th, 1900, it acquired the said business of the Texas Oil and Gasoline Company and continued to operate it under that name, and for the purposes aforesaid, from that time down until the present time, and in all things ratified and enforced said contracts and agreements and maintained them in full force and effect as aforesaid.

That the Waters Pierce Oil Company entered into many other contracts of this character (the making of such contracts constituting its manner and course of business), all of which contracts
57 have been by defendant, ratified, confirmed and in all things carried out.

That among the other purposes for which the Eagle Refining Company and the Texas Oil and Gasoline Company have been used and utilized by the Waters Pierce Oil Company, defendant, has been to cause said companies to solicit and secure the business of merchants and dealers in oil in the State of Texas who would not patronize the defendant Waters Pierce Oil Company and who were buying oil and petroleum supplies from independent concerns, that is, concerns not dominated and controlled by the Standard Oil Company.

Plaintiff further says that the Waters Pierce Oil Company, defendant, upon its reputed reorganization, entered into and maintained exclusive contracts and agreements with the Eagle Refining Company and the Texas Oil and Gasoline Company, aforesaid, whereby it was agreed that the said Eagle Refining Company and the Texas Oil and Gasoline Company would not for a period of 15 years enter into the business of refining and selling refined oil and gasoline and other products of petroleum in competition with said Waters Pierce Oil Company, defendant, and that said contracts and agreements were in all things carried out and enforced.

That in further pursuance of the unlawful purposes hereinbefore set forth, said Waters Pierce Oil Company, has made exclusive contracts by which it has prevented the handling of the products of other companies, has given rebates secretly, and has unfairly and secretly reduced prices at certain points when competition appeared

at such points, these acts constituting the ordinary course of business of defendant. That course of business is indicated by the following specific instances in the State of Texas: On Jan. 13, 1904, reduced the price of brilliant oil at Rusk, Texas, and at
58 Overton, Texas; Jan. 14, 1904, reduced the price of brilliant oil to less than schedule price at Henderson, Texas; On January 26th, 1904, on account of Gulf Refining Co. competition reduced the price to less than the schedule price at Carthage, Crockett, Gilmer, Nacogdoches, and Winnsboro, Texas, and on account of competition by Richardson-Gay Oil Co., at Mt. Pleasant, Texas; on Jan. 27th, 1904, reduced the price of oil at less than schedule price at Garrison, Texas, on account of Lone Star Oil Co. competition and at Marshall, Texas, on account of Richardson-Gay Oil Co. competition; on Feb'y 1, 1904, reduced the price of refined oil at less than schedule price on account of Richardson-Gay Oil Co. competition; on Feb'y 1, 1904, allowed a secret rebate tc W. E. Crosby on account of Richardson-Gay Oil Co. competition; on Feb'y 9, 1904, allowed a secret rebate to the Nacogdoches Grocery Co.; that on Jan. 14, 1904, said company authorized sales below the schedule price to the larger merchants of Weatherford, Texas, to prevent Richardson-Gay Oil Company from making up a car load; on Jan. 14, 1904, J. M. Radford Grocery Co., at Cisco and other points was allowed by defendant a discount of 12½% on their purchases of refined oil on account of competition; that on Jan. 20, 1904, the Roby Mercantile Grocery Co., of Roby, Texas, was allowed a discount on account of competition of the Lone Star Oil Company; that on Jan. 21, 1904, J. P. Darby of Lampasas, Texas, was allowed a rebate on account of Richardson-Gay Oil Company competition; on Feb'y 21, 1904, Beaumont white-water an inferior oil was put in and sold at Stamford, Texas, under the Eupion Brand on account of Lone Star Oil Company competition; on Feb'y 5, 1904, the schedule prices at Dallas, Texas, were reduced on account of use of inferior oil and on account of the competition of Richardson-Gay Oil Company. That all of the rebates and discounts above set forth were secretly made and in the conduct of unfair competition for
59 the purpose of making more complete the monopoly accomplished and otherwise herein set forth, and for the purpose and destroying unfairly the business of the competing concerns here set forth. That in many hundred cases defendant has pursued a like course, this constituting the ordinary method for the conduct of its business; among the person- to whom rebates were given for the purposes named being W. E. Crosby, J. P. Darby, D. J. Brown and J. F. Younger. That in further pursuance of the unlawful purposes hereinbefore set forth and as a part of its general course and scheme of business and in the further monopolizing of the business in petroleum as a product and in the further unfair destruction of competition, secret and questionable means were used in obtaining information concerning the business of competitors; that one, E. M. Talliafero, of Houston, Texas, was employed by the said Waters Pierce Oil Co. to ascertain from the employees of the railroads of Texas information concerning all shipments of oil by competing

concerns including amount of such shipment, the car number and initial, and was also employed to ascertain from the Clerks in the employe of the United States Custom Service at Sabine Pass and Port Arthur, Texas, the amount of all shipments of oil and the consignors and consignees thereof destined for Standard Oil territory; that the information thus obtained was furnished by the Waters Pierce Oil Co. to the Standard Oil Co. in exchange for like information secured by the Standard Oil Co. with reference to shipments in to the Waters Pierce Oil Co. territory.

Plaintiff says that on February 2, 1904, defendant entered into a contract with Paul W. Joplin, whereby the said Joplin bound and obligated himself to make no purchases of oil from anyone except defendant; that on January 25, 1905, said company entered into a contract with the Austin Electric Street Railway Company,
whereby said Company agreed to make no purchases of oil
60 except from defendant; that the making of such contracts constitutes the ordinary course of business of defendant, and a large number of such contracts have been made by defendant; said contracts are made for the purpose of monopolizing the oil business and are calculated to effect that end.

That by virtue of the facts hereinbefore set out the following, among other unlawful results, have been accomplished:

(1) The Waters Pierce Oil Company, which alone has been granted a permit to do business, is dominated and controlled and its business dictated by the Standard Oil Company of New Jersey, which has not been granted a permit to do business in Texas.

(2) A large number of individuals and corporations doing business in the sale of oil and petroleum products are excluded from doing business in the State and competition is lessened.

(3) The price of oil has been maintained at an exorbitant figure, being from ten to twenty-five per cent. higher than that of oil sold in the territory not claimed by defendant.

(4) Competition has been suppressed and business destroyed in the State by unconscionable and unfair means.

(5) A substantially complete monopoly in petroleum products has been established, the defendant having sold during the period of ten years past at least ninety five per cent. of all petroleum products sold.

Plaintiff says that refined oil and the other products of petroleum are articles of prime necessity to all the people of Texas.

Plaintiff further avers:

That as hereinbefore alleged the Waters Pierce Oil Company is a corporation created under and by virtue of the laws of the State
of Missouri, and was, as hereinbefore alleged, granted a per-
61 mit to transact business in the State of Texas.

That in granting said permit the State of Texas conferred upon said corporation the right to exercise in Texas only such powers as are granted by law to such corporations created for the purposes set forth in its said permit.

That said corporation in pursuance of its business immediately established stations and officers in the counties, cities, towns and

villages of Texas for the transaction of its business and supplying to the people of Texas oils and the products of petroleum; that in abuse of its corporate rights, franchise and powers, it forthwith began and has since maintained a war of extermination of all competitors within this State as hereinbefore set forth; that if formed alliances and conspiracies with divers other corporations within and without this State as hereinbefore set forth whereby it was enabled to establish and has established, a monopoly of said oil business in this State; that it has by a system of unfair competition and by various devices hereinbefore set forth, destroyed the business of its competitors; that at points where no competition existed said Waters Pierce Oil Company arbitrarily and for the purpose of recouping its losses at competitive points sold oils and the products at extraordinary and exorbitant prices far above the true market value thereof, and by reason of its monopoly of said business wrought great oppression upon the people of this State; that by reason of all the acts and conspiracies herein alleged it has succeeded in establishing a monopoly of the business of dealing in and selling oil within this State in violation of the Constitution of this State and the common law in force in this State.

That all the unlawful acts, combinations, agreements, conspiracies and monopolies hereinbefore recited are acts committed in
62 abuse and violation of the corporate rights and powers granted to said defendant by the State of Texas and is at the common law in force in this state such an abuse of its power, rights and franchises as a corporation, and the rights of the people of the State under its constitution and laws as to amount to a misuser of its corporate rights and powers and by reason thereof it has forfeited its rights to do any further business in this State.

Plaintiff says that by the acts, doings and undertakings hereinbefore set out the Waters Pierce Oil Company has violated the Constitution, the Statutes and the common law of the State of Texas, and has become liable to the penalties provided by law and to a cancellation of its permit to do business in this State.

Plaintiff says that defendant has especially violated the provisions of the law approved May 28, 1899, Chapter 146 of the Acts of 1899, and plaintiff says that defendant, a corporation transacting and conducting a business in this State, created, entered into and became a member of and party to a pool, trust, agreement, combination, confederation, and understanding with another and other corporations and with individuals and persons to regulate and fix the price of an article of manufacture, merchandise, and commodity, and said defendant entered into and became a member of and a party to a pool, trust, agreement combination, confederation and understanding with the Standard Oil Company and its officers and agents and many other corporations, the names of which plaintiff is unable to state, to regulate and fix the price of refined oil and the products of petroleum; and plaintiff says that defendant became and was continuously from the 31st day of May, 1900, a monopoly and was a party to a union, combination and consolidation and affilia-

tion of capital, credit, property, assets, skill and acts by and
63 between persons and corporations, to-wit: the Standard Oil Company and its agents and employees and other corporations, as aforesaid, and the defendant and its agents and officers, to regulate and fix the price of an article of manufacture, merchandise, commodity and product of mining, to-wit: the price of oil and the products of petroleum and to fix and limit the amount and quantity of such article, and to prevent competition in the sale and mining of said article, and said corporation affiliated, amalgamated and consolidated for the accomplishment of said illegal purpose and for said purposes the said Standard Oil Company acquired and after the 31st day of May, 1900, retained with the consent of defendant company and its stockholders the stock of said defendant; and said defendant was thereby guilty of a conspiracy to defraud and of a conspiracy to form or secure a trust or monopoly in restraint of trade; and said defendant being engaged in the buying and selling of the products of petroleum entered into a pool, and trust, agreement and combination, confederation, association and understanding by and with the Standard Oil Company of New Jersey and the corporation controlled by it to control and limit the trade in the products of petroleum and to limit competition in such trade; and said unlawful acts were done and performed by defendant upon each and every day from the 31st day of May, 1900, to the 31st day of March, 1903, and thereby said defendant became liable to pay the State of Texas Five Thousand Dollars ($5000) per day for each of such days, and became liable to have its permit to do business in this State cancelled.

That by said acts, hereinbefore set out, continued and carried out continuously since the 31st day of March, 1903, up to this time the said defendant has especially violated the act of March 31st, 1903, and became liable to the penalties thereof; that defendant has thereby became a party to a trust and to a combination of
64 capital, skill and acts by and between itself and the Standard Oil Company and the corporations controlled by it to create and which tends to create and carry out restrictions in trade and commerce, to-wit: the trade and commerce in petroleum and its products, and in the preparation of said products for market, and which created and tended to create and carry out restrictions in the free pursuit of a business authorized and permitted by the laws of this State, to-wit: the business of buying and selling the products of petroleum and to fix, maintain, increase and reduce the price of merchandise, produce and commodities, and to prevent and lessen competition in the manufacture, sale and purchase of mrechandise and commodities and to lessen competition, and to fix and maintain a standard and figure by which the price of an article is affected and controlled, and to make, enter into, execute and carry out or maintain a contract and agreement by which the parties bound themselves not to sell a certain article, to-wit: the products of petroleum, and by which they affect and maintain the price of such articles and preclude free and unrestricted competition among themselves and others in this State in the sale of said products and pooled, com-

bined and united their interests in connection with the sale and purchase of such commodities, and by which some of said parties agreed to abstain from continuing in business and from the sale or purchase of certain commodities in the State of Texas, and said defendant and said Standard Oil Company and the companies controlled by it entered into a combination and consolidation by which the directors of the affairs of two and more corporations were brought under the same management and control for the purpose of producing a trust, and said Standard Oil Company acquired a controlling interest in the stock of defendant corporation for the purpose and with the effect of preventing competition, and said defendant and said
65 Standard Oil Company entered into a conspiracy in restraint of trade. That all of said illegal acts were committed and performed by defendant upon each of the days from the 31st day of March, 1903, to this time, whereby it has become liable to pay the State of Texas penalties to the amount of $50.00 per day for each of said days, and has become liable to have its permit to do business in this State cancelled.

Plaintiff prays that it have judgment cancelling the permit issued to defendant on the 31st day of May, 1900, and for an injunction restraining it from doing any business other than an interstate business within this State, and that it have judgment for the sum of $5,239,000.00, penalties, and it prays for costs and for general relief.

R. V. DAVIDSON,
Attorney General.
JEWEL P. LIGHTFOOT,
Assistant Attorney General.
JOHN W. BRADY,
County Attorney of Travis Co.
GREGORY & BATTS AND
ALLEN & HART,
Attorneys for the State.

66 EXHIBIT C.

This agreement, made and entered into at the City of Cleveland, State of Ohio, this the 5th day of October, 1894, by and between the Eagle Refining Company, a corporation organized under the laws of the State of Ohio, party of the first part, S. S. Drake of the City of Bedford, State of Ohio, A. G. Carpenter, W. A. Smith, and W. H. K. Rose, of the City of Cleveland, State of Ohio, and A. W. Clem of the City of Dallas, State of Texas, parties of the second part, and the Waters Pierce Oil Company, a corporation organized under the laws of the State of Missouri, party of the third part, witnesseth: That in consideration of the original agreement between the said Eagle Refining Company and the said Waters Pierce Oil Company, which is hereto attached and made a part hereof, and the payment of the Eagle Refining Company of the sums of money required by the said agreement to be paid to it by the said Waters Pierce Oil Company, to-wit: the sum of ten thousand four hundred and ninety four dollars and nineteen cents, receipt of all which is hereby ac-

knowledged by it; the said Eagle Refining Company has sold, assigned, transferred, set over and delivered, and by these presents does sell, assign, transfer, set over and deliver unto the said Waters Pierce Oil Company, all its plant, stock, storage tanks and merchandise, heretofore owned and used in the business carried on by it in the State of Texas, enumerated in said original agreement and the inventory hereto attached and made a part hereof, together with the good will of said business in said State.

And for the said consideration, the said Eagle Refining Company gives and grants to the said Waters Pierce Oil Company the exclusive right and authority to use in and in connection with, the business carried on by the said Waters Pierce Oil Company, in the State of Texas, Missouri, Arkansas, Louisiana, west of the Mississippi River, the Indian and Oklahoma Territories and the Republic of Mexico, its said name of Eagle Refining Company, and all its brands, labels, and trade marks heretofore used by said Eagle Refining Company in said States, Territories and Republic, or either of them.

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And for the said consideration and other valuable considerations moving to them and each of them, the said Eagle Refining Company and the said S. S. Drake, A. G. Carpenter, W. A. Smith, W. H. K. Rose and A. W. Clem, who are respectively the President, Vice President, Secretary, Treasurer, General Manager and Agent of the said Eagle Refining Company covenant and agree to and with the said Waters Pierce Oil Company, that neither the said Eagle Refining Company nor the said parties of the second part shall or will for a term of fifteen years from and after the date of these presents, directly or indirectly, manufacture, refine, buy, sell or deal in, petroleum or other oils or their products, or any goods, wares, or merchandise, manufactured, handled or dealt in, by the said Waters Pierce Oil Company, in the said States of Missouri, Arkansas, Louisiana, west of the Mississippi River, Texas, and the Indian and Oklahoma Territories and the Republic of Mexico.

In witness whereof, the said Eagle Refining Company has caused these presents to be executed by its President and its corporate seal to be hereto affixed, and the said parties of the second part have hereunto set their hands—all done at the said City of Cleveland the day and year first above written.

(Signed) THE EAGLE REFINING CO.
S. S. DRAKE, Pres't.
S. S. DRAKE.
A. G. CARPENTER.
W. A. SMITH.

68 (Signed) WM. H. K. ROSE.
A. W. CLEM.

For value received, the undersigned, A. W. Clem, has released, assigned, transferred and set over, and by these presents, does release, transfer, and set over, to the said Waters Pierce Oil Company whatever interest he has, holds or owns in and to the property, business, good will, labels, trade marks, etc., mentioned in the foregoing instrument.

In witness whereof, I have hereunto set my hand at the City of Cleveland, State of Ohio, the 5th day of October, 1894.

A. W. CLEM.

WATERS PIERCE OIL COMPANY,
ST. LOUIS, MO., *September 13th*, 1894.

(*Memorandum of Agreement.*)

Mr. W. H. K. Rose, General Manager, Eagle Refining Co. Cleveland, Ohio.

DEAR SIR: In accordance with your verbal understanding of yesterday, we are to purchase the Eagle Refining Company of Cleveland, Ohio's plant, stock, business, etc., situated in the State of Texas, and are to pay for same their present value, which shall be actual costs where located, according to your inventory to be furnished us. It is understood that if the plant referred to cost, according to your books more than $5,600.00 we are not to pay you more than that amount for it; also, that if any part of the plant enumerated in your
69 inventory and as shown by your books is missing, its cost value is to be deducted from the $5,600.00.

In addition to the $5,600.00 or less above provided to be paid you we are to purchase from you at your actual costs two storage tanks now at Ft. Worth, Texas, also one lot of ground, at Oak Cliff, Texas. We are also to receive from and pay to you your actual costs for your merchandise on hand everywhere located in the State of Texas. All cash, notes, books, accounts or other assets belonging to your Texas business is to remain your property and Mr. A. W. Clem, may, while in our employ, collect and handle such assets for your account as you may direct without costs to you so far as his services are concerned.

A transfer of this property is to be made to us by you on or before October, 1st, 1894, and a legal contract executed by each of us providing for the Eagle Refining Company of Cleveland, Ohio, and the individuals now connected therewith, refraining from transacting any business in petroleum or other oils and goods handled by this Company in the States of Missouri, Arkansas, Louisiana west of the Mississippi River and Texas, the Indian and Oklahoma Territories and Republic of Mexico during a term of fifteen years from October 1st, 1894; also that the Waters Pierce Oil Company are to have the privilege of continuing and enlarging the present business of the Eagle Refining Company of Cleveland, Ohio, in that name, also the use of its trade marks, brands, etc., within the States of Missouri, Arkansas, Louisiana west of the Mississippi River, and Texas, the Indian and Oklahoma Territories and the Republic of Mexico.

It is further understood that so much of the $2500.00 which we are to pay under our agreement of this date with A. W.
70 Clem shall be paid by us to you as may be necessary to make good to you Mr. Clem's acknowledged indebtedness to you.

Your- truly,
(Signed) H. C. PIERCE, *President.*

We hereby accept the above agreement.
(Signed) WM. H. K. ROSE.

Subject to approval of the company.

CLEVELAND, O., *Oct.* 1*st*, 1894.

This is to certify that at a special meeting of the directors of the Eagle Refining Co. held in the City of Cleveland, Ohio, on the first day of October, 1894, the following resolutions were passed:

Resolved: That we hereby accept the proposition of the Waters Pierce Oil Co., of St. Louis, Mo. for the purchase of our branch in Dallas, Texas, and other towns named in said proposition, including also such other territory as named therein. And we hereby authorize our General Manager, W. H. K. Rose, to accept said proposition, in behalf of this Company, with authority to execute all the necessary papers for transferring and completing the same; and for the purpose of conveying the real estate at Dallas, Texas, the Vice President of this Company, A. G. Carpenter, Esq., and the Secretary, W. A. Smith, are hereby authorized and empowered to execute a deed conveying said premises in fee simple.

In witness whereof, I hereunto set my hand as the Secretary of said Company, and attach the corporate seal hereto this 1st day of October, 1894.

(Signed) W. A. SMITH, *Sec'ty.*

[Seal of Eagle Refining Co.]

71 This memorandum of agreement made and entered into at the City of St. Louis, State of Missouri, this 5th day of October, 1894, by and between the Waters Pierce Oil Company, a corporation, organized under the laws of said State, the first party, and A. W. Clem, of the City of Dallas, State of Texas, the second party, witnesseth:

That the first party has employed, and by these presents does employ the second party as a manager, assistant manager, agent or salesman, of or in a branch or department of its business in Texas, or elsewhere, or in such other like capacity, as the first party, or its duly authorized officers or agents, may from time to time determine, for a term of three years, beginning on the first day of October, 1894, and ending on the first day of October, 1897, and promise- and agrees to pay the second party, for the faithful performance of the duties and services of said employment, as prescribed herein, the sum of two hundred and fifty dollars ($250.00) per month, payable at the end of each month.

That the said A. W. Clem has accepted and by these presents does accept said employment, and promises and agrees to faithfully perform the duties and services thereof as they may from time to time be prescribed and directed by the authorized officers and agents, and the rules and regulations of the first party.

In witness whereof, the first party has caused these presents to be executed by H. C. Pierce, its president, and the second party has

hereunto set its hand, in duplicate, the day and year first above written.

A. W. CLEM.
WATERS PIERCE OIL CO.,
By H. C. PIERCE, *P't.*

72 (Endorsed:) No. 24,551. The State of Texas *vs.* Waters Pierce Oil Co. Plaintiff's Second Amended Original Petition. Filed April 29, 1907. D. J. Pickle, Clerk.

Defendant's Third Amended Original Answer.

Filed May 8, 1907.

In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
v.
WATERS PIERCE OIL COMPANY.

In the above entitled and numbered cause, now comes the Waters Pierce Oil Company, which was granted a charter and became duly incorporated under the laws of the State of Missouri on the 29th day of May, 1900, and which was, in due form of law, granted a permit to do business in the State of Texas on the 31st day of May, A. D. 1900, and whose local agent, W. T. Quillan, was served with the writ of citation in this suit, and, leave of the court having been first obtained, files this, its Third Amended Original Answer herein, in lieu of its Second Amended Original Answer filed herein on the 28th day of November, A. D. 1906, and for answer herein says:

I.

By way of pleas in abatement of this action on account of matters appearing upon the face of plaintiff's petition this defendant says:

1. This defendant excepts to plaintiff's petition, and says that there is a misjoinder of causes of action therein, in that
73 the State attempts to set up certain alleged frauds growing out of the dissolution of another corporation of the same name as this defendant, and certain other alleged frauds charged to have been committed in connection with the procurement by this defendant of the permit to do business in Texas issued to this defendant by the Secretary of State of the State of Texas on May 31st, 1900, all of which allegations appear to be pleaded in the form of an equitable action to set aside and rescind defendant's said permit to do business in Texas, and in the same partition, and in one continuous or common count, the State sets up certain alleged acts and offenses alleged to have been committed by this defendant in alleged violation of the anti-trust act of 1899, and certain other alleged acts and offenses alleged to have been committed by this defendant in al-

leged violation of the anti-trust act of 1903, and upon which the State seeks to recover penatlies and to cancel defendant's permit to do business in Texas, and in the same common or continuous count the State alleges certain acts of defendant alleged by it to constitute a misuser of its said corporate franchise and permit to do business in this State, such as, it is claimed by the plaintiff, entitled plaintiff to cancel its said permit to do business in this State independently of the penal statutes of this State under which such penalties and cancellation of permit are sought, as above set forth, thus presenting several and wholly distinct causes of action, not depending upon the same state of facts, and which, if tried together will produce a great confusion of issues to the prejudice of this defendant, and this defendant says that the State should be put to an election as to which of said several causes of action it will prosecute in this suit, and that it be required to replead and omit from the petition all matters not pertinent to the particular cause of action upon which it shall rely, and defendant prays that this be done.

2. This defendant further excepts to plaintiff's petition,
74 and says that the same is duplicitous and insufficient in law, in that it fails by any positive allegation to set out or show whether it sues this defendant as a corporation duly chartered, or whether it proposes to sue defendant as a partnership or association of persons and to attack its charter as issued by the State of Missouri as void, and thus seek to set aside its permit to do business in Texas on the ground that its said charter was illegally issued; and, therefore, there is a failure by the State to designate and identify the party or parties sued herein with sufficient certainty to enable this defendant to properly plead or answer herein, and of this exception defendant prays judgment and moves the Court to strike out the plaintiff's petition.

3. This defendant further specially excepts to plaintiff's petition and says that the same is duplicitous and contradictory in all allegations with reference to all acts and doings by or with respect to the Waters Pierce Oil Company and charged to have been committed prior to the 29th day of May, A. D. 1900, when, according to the petition, this defendant first became incorporated on that date, for the reason that in all such allegations the said acts and doings are alleged to have been performed by or with respect to this defendant notwithstanding this defendant was not in existence, and there is, therefore, such confusion and contradiction upon the face of plaintiff's petition as to require that it be stricken out, and defendant prays the court that this be done.

4. This defendant further excepts to plaintiff's petition on account of the allegation contained in the third paragraph of subdivision five thereof, wherein it is charged "That in further pursuance of the conspiracy aforesaid, etc., the manager, officers and agents of the Standard Oil Company, the Waters Pierce Oil Company, and its officers, and H. C. Pierce and the other con-
75 spirators hereinbefore mentioned determined to go through the form of dissolving the corporation known as the Waters Pierce Oil Company, and of creating a new corporation for the

holding of property and the transaction of the business of the Waters Pierce Oil Company and carrying out the plans and conspiracies aforesaid," and on account of the allegations contained in the fourth and fifth paragraphs of said subdivision of the petition and says that the petition is insufficient and that this suit should be abated for the reason that none of the parties engaged in the said alleged conspiracy and in the organization of the defendant are made parties to this suit, and hence, this court has no jurisdiction to adjudicate with respect to their acts, doings or rights in the premises, and this defendant further says that if it did not become a corporation *de jure* by reason of the incorporation sought to be attacked by plaintiff in said portion of the petition, then the only persons who could be made responsible and liable for the said alleged frauds and conspiracies are not made parties to this action, and defendant further says that it appears from the petition that it could not have participated in a fraud precedent to its creation as a legal corporation, and of this defendant prays judgment of the Court.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. O'DELL,
N. A. STEDMAN,
Attorneys for Defendant.

J. D. JOHNSON,
H. S. PRIEST,
Of Counsel.

76 II.

And for further answer herein, if the Court shall refuse to strike out the plaintiff's petition and dismiss this suit, then defendant excepts to plaintiff's petition as a whole and says that the same is insufficient in law to require it to answer herein and shows no cause of action against defendant, and of this defendant prays judgment of the court.

And by way of special exception to plaintiff's petition this defendant says:

1. This defendant excepts to the plaintiff's petition in so far as it is thereby sought to rescind defendant's permit to do business in this State on account of alleged fraud in the procurement of such permit, and says that the same shows no cause of action for such rescision, and of this defendant prays judgment of the Court.

2. Defendant excepts to plaintiff's petition in so far as it is thereby sought to cancel defendant's permit to do business, in this State, independently of the provisions of the Acts of May 25th, 1899, and March 31st, 1903, on account of the alleged misuser of its corporate franchise, and says that the same shows no cause of action for such cancellation, and of this defendant prays judgment of the Court.

3. Defendant especially excepts to all allegations in plaintiff's petition whereby it is sought to rescind this defendant's permit to transact business within this State on account of alleged illegality in the dissolution of the first Waters Pierce Oil Company and on account of the alleged illegality in the incorporation of this defend-

ant on May 29th, 1900, and says that the same are insufficient to show any cause of action for such rescision for the reason that it
77 appears from plaintiff's petition that the dissolution of said old or first Waters Pierce Oil Company and the incorporation of this defendant, by the issuance of a proper certificate of incorporation by the Secretary of State of the State of Missouri were evidenced by properly certified copies under the hands and seal of the proper public officers of the State of Missouri, and under the great seal of said State, and filed in the office of the Secretary of State of the State of Texas, and by him accepted as such, when said permit was issued, and defendant says that the same became, were, and are conclusive upon the State of Texas and all of its officers and courts, under the provisions of Section 1, Article IV of the Constitution of the United States, which declares that "full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State," and this defendant further says that until its said articles of incorporation and the charter granted to it by the State of Missouri are set aside and cancelled in some proper proceedings in said State, its proper legal existence cannot be drawn in question as is here attempted, and it here invokes the above provision of the Constitution of the United States as a defense herein, and prays the Court to strike out all allegations in said petition with respect to the dissolution of said old or first Waters Pierce Oil Company, and as to the manner of organization and incorporation of the present or new Waters Pierce Oil Company, and particularly to strike from said petition all of subdivision five thereof, and, if the Court should refuse to strike out all of such allegations or refuse to strike out all of said subdivision five of plaintiff's petition, then to strike out all the allegations contained in plaintiff's petition, and all the allegations contained in said subdivision five of plaintiff's petition whereby plaintiff attempts to question or deny the validity of the dissolution of said old or first
78 Waters Pierce Oil Company or to question or deny the legality or validity of the organization and incorporation of this defendant, and of this defendant prays the judgment of the Court.

4. Defendant excepts to all the allegations contained in plaintiff's petition with reference to the affidavit of the President of this defendant alleged to have been made and filed with the Secretary of State of this State at the time of the application of this defendant for a permit to do business in this State on May 31st, 1900, and all allegations contained in the petition with reference to representations alleged to have been made by the President of this defendant to the Secretary of State of this State at the time of such application for such permit, and says that the same are immaterial and irrelevant to any issue in this case and show no cause of action against this defendant, for the reason that it affirmatively appears from plaintiff's petition that defendant was duly chartered as a corporation under the laws of the State of Missouri, and authorized by its charter to transact business in this State, and was such a corporation as was permitted by the laws of this State to transact business in this State,

and that it further appears from plaintiff's petition that defendant, at the time of filing its said application for such permit, filed with the Secretary of State of this State a duly certified copy of its articles of incorporation under the laws of the State of Missouri, and defendant says that under the provisions of Article 745, Revised Statutes of this State, and in force at said time, it thereupon became and was the duty of the Secretary of State of this State to issue to this defendant a permit to do business in this State, and that the Secretary of State had no discretion with reference to the issuance of such permit, and had no warrant or authority in law to make any inquiry of any character relative to this defendant as a condition precedent to the issuance of such permit, but that, upon the presentation
79 of said certified copy of its charter, defendant was entitled to a permit to do business in this State as a matter of right, and that, therefore, any inquiry as to the said alleged affidavit or any of the representations alleged to have been made by the president of this defendant to the Secretary of State becomes immaterial and irrelevant, and of this special exception defendant prays judgment of the court and moves the court to strike out all allegations contained in plaintiff's petition with reference to the said alleged affidavit and the said alleged representations and the alleged falsity thereof.

5. In the event that the immediately preceding special exception should be overruled, then defendant excepts to all allegations contained in plaintiff's petition with reference to the representations alleged to have been made by the President of this defendant to the Secretary of State of this State at the time of the application of defendant for a permit to do business in this State, other than the representations contained in said affidavit set out in plaintiff's petition, and defendant says that all such allegations are, for the reasons stated in the immediately preceding special exception, immaterial and irrelevant to any issue in this case and show no cause of action in favor of plaintiff, and of this special exception defendant prays judgment of the Court.

6. This defendant specially excepts to plaintiff's petition, and to all parts and paragraphs thereof, alleging acts and doings by this defendant, or other persons or corporations in alleged violation of the provisions of the Act of the Legislature of the State of Texas, approved May 25th, 1899, Chapter 146, of the General Laws of the State of Texas, passed at the regular session of the Twenty-sixth Legislature, for the reason that said Act was and is void and of no force as a law, because by its terms it was enacted as, and
80 made cumulative, of, and in continuance of the then existing Act of the Legislature of the State of Texas upon the same subject, approved April 30th, 1895, Chapter 83, of the General Laws of the State of Texas, passed at the regular session of the Twenty-fourth Legislature, in which said last named Act it was provided that said Act should not be held to apply to live stock and agricultural products in the hands of the producer or raiser, nor to be understood or construed to prevent the organization of laborers for the purpose of maintaining any standard of wages, and de-

fendant says that because of the said exceptions contained in said last named enactment and because said act of May 25th, 1899, was made cumulative of said then existing statute upon the same subject, the said exempted classes so exempted from the provisions of said Act of April 30th, 1895, were excepted from the provisions of said Act of May 25th, 1899, and for this reason said Act of May 25th, 1899, was and is violative of the Constitution of the United States, and particularly of the Fourteenth Amendment thereof, in that it seeks to deprive this defendant of its property without due process of law and seeks to deny to this defendant the equal protection of the laws, and of this special exception defendant prays judgment of the court.

7. This defendant further specially excepts to all parts and paragraphs of plaintiff's petition whereby it is sought to recover penalties or to forfeit defendant's permit to do business in this State, because of anything alleged to have been done by it in violation of said Act of May 25th, 1899, because said Act of May 25th, 1899, was and is void for the reason that at the same session of the Legislature of the State of Texas, at which said Act was passed, and by an Act approved May 27th, 1899, Chapter 153 of the General Laws of the State of Texas, passed at the said regular session of the Twenty-sixth Legislature, another act was passed upon the same subject, which provides that it shall be lawful for any and all
81 persons engaged in any kind of work, or labor, manual or mental, or both, to associate themselves together and form trade unions and other organizations for the purpose of protecting themselves in their personal work, personal labor, and personal service in their respective pursuits and employments, and this defendant says that by said last mentioned Act the exceptions of said Act of April 30th, 1895, if not carried forward as part of said Act of May 25th, 1899, in terms, were enlarged and increased, and it thereby became lawful for all classes of persons including manufacturers, merchants, and dealers in coal oil and the products of petroleum and other commodities, who should in conducting their said businesses, give personal attention thereto and labor with hands or brain in the conduct of their said businesses, and for all persons engaged in the raising of agricultural products or live stock, and who, in conducting their said businesses, should give their personal attention thereto and labor with hands or brain in the conduct of such businesses, to enter into any kind of combination, association, pool of agreement with reference to their said businesses, and, wherefore, defendant says that said act of May 25th, 1899, because of the said act of May 27th, 1899, was and is a violation of the Constitution of the United States, and particularly of the Fourteenth Amendment thereto, in that it seeks to deprive this defendant of its property without due process of law and denies to this defendant the equal protection of the laws, and of this special exception this defendant prays judgment of the Court.

8. This defendant further excepts to plaintiff's petition and to all parts and paragraphs thereof setting up alleged acts and doings by this defendant and others in alleged violation of the provisions of

the act of the Legislature of the State of Texas approved March 31st, 1903, because said Act was and is unconstitutional and void, for the reason that said prior act of May 27th, 1899, exempting
82 all persons, who may labor with their hands or brain in conducting their businesses, from the operation of all laws upon the same subject, was not repealed by the said Act of March 31st, 1903, and must therefore, be taken as a part of said Act of March 31st, 1903, and because of such exemptions created by said Act of May 27th, 1899, said Act of March 31st, 1903, is violative of the Constitution of the United States, and particularly of the Fourteenth Amendment thereof, in that it seeks to deprive this defendant of its property without due process of law, and seeks to deny to defendant the equal protection of the laws, and of this special exception defendant prays judgment of the Court.

9. This defendant further excepts to plaintiff's said petition and to all parts and paragraphs thereof by which it is sought to hold this defendant subject to the provisions of the said act of March 31, 1903, and to cancel its permit to do business in this State and to recover penalties against it, on account of the alleged holding or ownership by the Standard Oil Company of New Jersey of a majority of its stock, because, according to the allegations in plaintiff's petition, said stock was so held and owned by said Standard Oil Company at and long prior to the passage of said Act of March 31, 1903, and its ownership of said stock, being a vested right, and not in violation of the laws of the State of Texas when defendant's permit to transact business in Texas was granted to it on May 31st, 1900, it was not competent or within the constitutional power of the Legislature of the State of Texas to interfere with such ownership, or divest said Standard Oil Company of its said property in said stock, or to make it an offense by this defendant subjecting it to penalties and to a forfeiture of its said permit, for such vested and prior ownership to continue, and that said Act of March 31st, 1903, is violative
83 of the Constitution of the United States, for the reason that it is both *ex post facto* and retroactive in its operation and for the additional reason that if given the effect of prohibiting the continuance of such ownership of said stock by said Standard Oil Company and of making it an offense on the part of this defendant for such holding to continue, it would deprive this defendant of its property without due process of law and deny to this defendant the equal protection of the laws and impair the obligations of a contract, contrary to paragraph 1, Section 10, Article I, of the Constitution of the United States, and contrary to the provisions of Section 1 of the Fourteenth Amendment thereto, and for these reasons this defendant says that it is apparent that all allegations in said petition with respect to the alleged ownership of defendant's stock by the Standard Oil Company should be stricken out, and of this special exception defendant prays judgment of the Court.

10. This defendant further excepts to plaintiff's petition, and to all parts and paragraphs thereof, which seek to hold this defendant liable to penalties and a forfeiture of its permit to do business in this State because of the alleged agreement or understanding by which,

it is alleged, that, in consideration of defendant purchasing all of its supplies from said Standard Oil Company, said Standard Oil Company agreed that defendant should be permitted to sell its products in Texas, without competition or interference by said Standard Oil Company, because it affirmatively appears from the petition that said Standard Oil Company was and is a citizen of the State of New Jersey, and that it has never obtained a permit to do business in the State of Texas, and it is not alleged that it ever contemplated entering the State of Texas to do business therein in competition with defendant, or that it could have obtained a permit so to do,
84 and therefore, it appears that an agreement such as alleged, if made, could not be construed as violating any laws of the State of Texas, without giving to such laws an extra-territorial effect and operation, binding upon the citizens of other States, and with respect to inter-state commerce, and in violation of the Constitution of the United States, and of this special exception defendant prays judgment of the Court and moves the Court to strike out all allegations in the petition with respect to said alleged agreement and understanding with said Standard Oil Company.

11. This defendant specially excepts to plaintiff's petition, and to all parts and paragraphs thereof, which seek to charge this defendant with having violated any law of the State of Texas, because of any or all of the alleged acts, agreements and understandings with said Standard Oil Company, or because of the alleged ownership of its stock by said Standard Oil Company, because it affirmatively appears from the petition that said Standard Oil Company was not such a corporation as could qualify and lawfully receive a permit to do business in this State, and, therefore, any such act, agreement or understanding so alleged to have been made by defendant with said Standard Oil Company could not, if made, affect trade or commerce in Texas or be held to be in restraint thereof or in any manner violative of the laws of the State of Texas, and of this special exception defendant prays judgment of the court, and moves the court to strike out all such allegations.

12. This defendant further excepts to plaintiff's petition, and to all parts and paragraphs thereof which seek to charge it to have been a violation of any of the anti-trust laws of the State of Texas for defendant, as a dealer in manufactured articles, to demand of the manufacturer of such articles, as a condition to the purchase thereof by defendant, that if, the manufacturer, should not engage in business in competition with defendant, as a dealer, and defendant
85 says that, if the statutes of the State of Texas are susceptible of the construction contended for by the State in this respect, that such statutes violate the fundamental and universal rules of commerce between two distinct classes of persons, viz: manufacturers and those who deal in the products of such manufacturers, and to so construe said statute would be to cause the same to contravene the Constitution of the United States and to deprive the citizen of his liberty and property without due process of law and would be an attempt upon the part of the State of Texas to deprive this defendant

of its liberty and property without due process of law, and of this special exception defendant prays judgment of the Court.

13. Defendant further excepts to plaintiff's petition and to all parts and paragraphs thereof wherein and whereby the plaintiff seeks to charge an offense or offenses against its laws against this defendant by reason of the alleged agreement on the part of defendant to buy all of its supplies from said Standard Oil Company and corporations controlled by it, and defendant says that all such allegations are insufficient, because it is not alleged where such contract or agreement was made, nor where nor how it was to be performed, and it does not sufficiently appear from the allegations of the petition that the said alleged contract and agreement was not made by this defendant in the State of Missouri with said Standard Oil Company in the State of New Jersey, and to be performed by delivery of the commodities from some other state in the unbroken packages in which they were to be shipped to defendant in Texas, and it does not appear but that said entire transaction and alleged series of transactions involved wholly and in every detail matters of inter-state commerce, to which the local statute of this state can have no application, and of this special exception defendant prays judgment
86 of the court and moves the court to strike out all allegations the petition with reference to the alleged purchase by defendant of its supplies and with respect to the said alleged agreement with said Standard Oil Company of New Jersey.

14. Defendant further excepts to so much of plaintiff's petition as prays for the recovery of penalties against this defendant on account of the alleged acts of fraud in obtaining its permit to do business in this State, and says that such acts, if committed, would give to plaintiff no right of recovery of penalties against this defendant, and of this special exception defendant prays judgment of the Court.

15. Defendant specially excepts to so much of plaintiff's petition as prays for the recovery of penalties against this defendant on account of alleged violations of the common law of this state, and the Constitution of this State, and says that said alleged violations of the common law of this State and of the Constitution of this State, if committed, would give to plaintiff no right of recovery of penalties against this defendant, and of this defendant prays judgment of the Court.

16. Defendant specially excepts to all of the allegations contained in plaintiff's petition whereby it is sought to recover penalties of this defendant, because of the alleged holding of its stock by any other person or corporation in alleged violation of the statutes of this state, and says that the same are insufficient for the reason that it is not made to appear that defendant, by the law of its domicile, had any control over its stock or right to prevent anyone from holding its stock, or that by any means it could have prevented any other person or corporation from holding such stock, and to hold this defendant liable for penalties on account of such alleged holdings by other corporations of its stock, and without showing that defendant had in its power the means of preventing such holding would be

violative of the Constitution of the United States in that it
87 would deprive defendant of its property without due process of law and deny to defendant the equal protection of the laws, and of this special exception defendant prays judgment of the Court.

17. This defendant specially excepts to all portions of plaintiff's petition whereby it is sought to recover penalties of this defendant on account of the alleged ownership by the said Standard Oil Company of shares of its stock, and says that the same are insufficient for the reason that it affirmatively appears from plaintiff's petition that the defendant is a corporation organized and incorporated under the laws of the State of Missouri, and that the matter of who shall own stock of this defendant, and who shall control the operations and business of this defendant, is one over which the State of Missouri has exclusive jurisdiction and control, and that it is not competent or within the constitutional powers of the State of Texas to inflict penalties upon this defendant because of the alleged ownership by said Standard Oil Company of its business as incidental to the alleged ownership of such stock, without showing that such ownership, and such control incidental to such ownership, was forbidden by the laws of the State of Missouri, and to so hold would be violative of the Constitution of the United States in that it would deprive defendant of its property without due process of law and deny to defendant the equal protection of the laws, and of this special exception defendant prays judgment of the Court.

18. Defendant specially excepts to so much of plaintiff's petition as seeks to recover of defendant penalties on account of alleged violations of the said Act of the Legislature of the State of Texas, approved May 25th, 1899, or to cancel its permit to do business in this
88 state, on account of alleged violations of said act, and says that the same are insufficient and show no cause of action against this defendant for the recovery of such penalties or for the cancellation of such permit for the reason that the said Act of May 25th, 1899, was repealed by the Act of March 31st, 1903, by the express terms thereof, and that the provisions contained in Section 17, of said Act of March 31st, 1903, whereby it was provided that "nothing in this Act shall be held or construed to affect or destroy any rights of the State of Texas to recover penalties or forfeit charters of domestic corporations, or prohibit foreign corporations from doing business in this State, for acts committed before this Act takes effect," is unconstitutional and void, for the reason that the subject of such provisions was not embraced in the title of said Act, but, on the contrary, such provision was excluded by the title of said Act, and of this special exception defendant prays judgment of the Court.

19. If the immediately foregoing special exception should be overruled, then defendant specially expects to so much of plaintiff's petition as seeks to recover penalties of this defendant on account of alleged violations of the said Act of May 25th, 1899, and says that the same give rise to no cause of action against this defendant for the recovery of such penalties, for the reason that the said Act of

May 25th, 1899, was repealed by the said Act of March 31st, 1903, by the express terms thereof, and that no right in the State of Texas to recover penalties against this defendant, or any other foreign corporation doing business in this State, on account of violations of said Act of May 25th, 1899, was reserved to the State by said Act of March 31st, 1903, and of this defendant prays judgment of the Court.

20. If the Court should construe plaintiff's petition as alleging that this defendant is the same corporation—the same entity as the first Waters Pierce Oil Company, then defendant excepts to
89 all the allegations in plaintiff's petition whereby it is sought to recover penalties of this defendant under the provisions of said Act of May 25th, 1899, on account of the alleged ownership by said Standard Oil Company of the Stock of this defendant, or on account of the alleged agreement between this defendant and said Standard Oil Company, or on account of the alleged agreements between this defendant and the said Standard Oil Company and the other corporations and persons mentioned in plaintiff's petition, and says that the same are insufficient for the reason that, if the petition be so construed, it then affirmatively appears from plaintiff's petition that said alleged ownership of the stock of this defendant by said Standard Oil Company existed at the time of and prior to the taking effect of said Act of May 25th, 1899, and that all of said alleged agreements and understandings were made and entered into prior to the passage of said Act, and for the reason that said act was intended to act prospectively only, and if intended to apply to ownerships by one corporation of the stock of another corporation, or to apply to agreements of the character of said alleged agreement so set forth in plaintiff's petition, it was only intended to apply to such ownerships of stock as should be acquired after the taking effect of said Act and to such agreements as should be made or entered into after the taking effect of said Act; and, if said Act should be construed as having been intended by the Legislature to authorize the recovery against this defendant of the penalties provided for in said Act, on account of the continuation of said alleged ownership of its stock by the said Standard Oil Company, or on account of the performance by this defendant of any of the alleged agreements so alleged to have been made prior to the taking effect of said Act, such Act, so construed, would be violative of the Constitution
90 of the United States in that it would be retroactive in its effect and impair the obligations of contracts and deny to this defendant the equal protection of the laws and would take the property of this defendant without due process of law, and of this defendant prays judgment of the Court.

21. Defendant excepts to all the allegations in plaintiff's petition whereby it is sought to recover penalties of this defendant under the provisions of said Act of March 31st, 1903, on account of the alleged ownership by the said Standard Oil Company of the stock of this defendant, or on account of the alleged agreements between this defendant and the said Standard Oil Company, or on account of the alleged agreements between this defendant and the said Standard Oil

Company and the other corporations and persons mentioned in plaintiff's petition, and says that the same are insufficient for the reason that it affirmatively appears from plaintiff's petition that said alleged ownership of the stock of this defendant by the Standard Oil Company of New Jersey existed at the time of and prior to the passage of the said Act of March 31st, 1903, and that all of said alleged agreements and understandings were made and entered into prior to the passage of said Act of March 31st, 1903, and for the reason that said Act was intended to act prospectively only, and if intended to apply to ownerships by one corporation of the stock of another corporation, or to apply to agreements of the character set forth in plaintiff's petition, it was only intended to apply to such ownership of stock as should be acquired after the taking effect of said Act and to such agreements as should be made or entered into after the taking effect of said Act, and if said Act should be construed as having been intended by the Legislature to authorize the recovery against this defendant or the penalties provided for in said Act on account of the continuance of said alleged ownership of the stock by the said Standard Oil Company or on account of the
91 performance by this defendant or any of the alleged agreements so alleged to have been made prior to the taking effect of said Act, such Act so construed, would be violative of the Constitution of the United States, in that it would be retroactive in its effect and impair the obligations of contracts and deny to this defendant the equal protection of the laws and would take the property of this defendant without due process of law, and this it prays judgment of the Court.

22. If the Court should construe plaintiff's petition as properly alleging this defendant to be the same corporation—the same entity—as the first Waters Pierce Oil Company, then this defendant excepts to all the allegations contained in plaintiff's petition whereby it is sought, under the provisions of said Act of May 25th, 1899, to cancel its permit to do business in this State on account of the alleged ownership of its stock by the said Standard Oil Company or on account of the alleged agreements between this defendant and the said Standard Oil Company and other corporations, for the reason that if the petition be so construed, then it affirmatively appears from the petition that the said Standard Oil Company of New Jersey acquired the said stock and acquired a vested right therein prior to the taking effect of said Act of May 25th, 1899, and if said petition be so construed it further affirmatively appears therefrom that all the alleged agreements so charged to have been made by this defendant with the said Standard Oil Company and said other persons and corporations were made and entered into prior to the taking effect of said Act, and, if the said Act of May 25th, 1899, was intended to apply to ownerships by one crrporations of the stock of another, such as it is alleged in plaintiff's petition, or to agreements of the character alleged in plaintiff's petition, said Act was intended to act prospectively only and could act prospectively only and applies only to such ownerships as have been acquired subsequent to the
92 taking effect of said act and to such agreements as have been entered into since the taking effect of said act, and the peti-

tion, therefore, shows no cause of action against this defendant, under said Act of May 25th, 1899, to cancel its said permit to do business in this State, and of this special exception defendant prays judgment of the Court.

23. Defendant specially excepts to all the allegations contained in plaintiff's petition whereby it is sought, under the provisions of said Act of March 31, 1903, to cancel defendant's permit to do business in this State on account of the said alleged ownership of its stock by the said Standard Oil Company, or on account of the said alleged agreements between this defendant and the said Standard Oil Company of New Jersey and other persons and corporations, for the reason that, if the petition be so construed, then it affirmatively appears from the petition that the said Standard Oil Company acquired the said stock and acquired a vested right therein prior to the taking effect of said Act of March 31st, 1903, and if said petition be so construed it further affirmatively appears therefrom that all the alleged agreements so charged to have been made by this defendant with the said Standard Oil Company and said other persons and corporations were made and entered into prior to the taking effect of said Act, and, if the said Act of March 31, 1903, was intended to apply to ownerships by one corporation of the stock of another, such as is alleged in plaintiff's petition said Act was intended to act prospectively only and could act prospectively only, and applies only to such ownerships as have been acquired subsequent to the taking effect of said Act and to such agreements as have been entered into since the taking effect of said Act, and the petition, therefore, shows no cause of action against this defendant, under said Act of March 31, 1903, to cancel its said permit to do business in this State, and
93 of this special exception defendant prays judgment of the Court.

24. Defendant specially excepts to all the allegations contained in plaintiff's petition whereby plaintiff seeks, under the provisions of said Act of May 25th, 1899, to recover penalties of this defendant or to cancel its permit to do business in this State, for the reason that said Act of May 25th, 1899, was repealed by the said Act of March 31st, 1903, and if the proviso contained in the last section of said Act of March 31st, 1903, could be held to preserve to the State any right of action against any person or corporation on account of violations of said Act of May 25th, 1899, it could have the effect only of preserving such right in cases where suits were actually pending at the time of the passage of said Act of March 31st, 1903, and this suit was not filed until September 22nd, 1906, long after the taking effect of said Act of March 31st, 1903, and of this special exception defendant prays the judgment of the Court.

25. Defendant further specially excepts to plaintiff's petition and says the same is insufficient in law to entitle plaintiff to recover herein and for grounds of exception defendant says, that the Act of the Legislature approved May 25th, 1899, and the Act of the Legislature approved March 31st, 1903, under which the State seeks to recover herein, are each null and void and of no force as a law, because each of said Acts is so indefinite, vague and uncertain

in its terms that it cannot be ascertained by the language used what particular acts fall with the prohibitions of said statutes and constitute an offense subjecting the offender to punishment as therein prescribed, and for that reason a person cannot know in advance of committing the act whether he is violating the law, and therefore to subject this defendant to heavy penalties and to a forfeiture of its permit to transact business in the State of Texas for an alleged
94 violation of either of said Acts of the Legislature will result in the taking of this defendant's property without due process of law and will deny to it the equal protection of the law in contravention of the provisions of the Constitution of the United States, and particularly in violation of Section One of the Fourteenth Amendment thereof, and this defendant here claims the protection of the Constitution of the United States, and particularly the said Section One of the Fourteenth Amendment thereof, as a defense to this suit, and of this defendant prays judgment of the court.

26. Defendant further specially excepts to plaintiff's petition in so far as it seeks to recover penalties for each and every day since the 31st day of May, A. D. 1900, up to the filing of this suit, a period of more than six years, and amounting in the aggregate to Five Million, Two Hundred and Twenty-eight Thousand and Four Hundred Dollars, because to so construe the law and enable the officers of the State charged with the enforcement thereof to delay bringing suit and challenge the right of the defendant to conduct its business in the manner it did, is to convert the law into an engine of oppression and make of a statute intended to prevent wrong-doings, a means of revenue to the State, and as against the right of State to claim and recover cumulative penalties, or any sum beyond a penalty for one day, this defendant says that to so construe the law and recover accumulated penalties will result in taking this defendant's property without due process of law and will deny to defendant the equal protection of the law, in violation of the Constitution of the United States, and particularly of Section One of the Fourteenth Amendment thereof, and this defendant here claims the protection of the said constitution, and particularly the said Section One of the
95 Fourteenth Amendment thereof, as a defense against the right of the State of Texas to recover any sum beyond the penalty of a single day, and of this exception this defendant prays the judgment of the Court.

27. Defendant for further special exception says that the plaintiff's said petition is defective in substance and in form in so far as it seeks to recover penalties in a single count for alleged violations of law charged to have been committed by defendant on each and every day from the 31st day of May, A. D. 1900, to the day of the filing of this suit, a period of six years, three months and twenty-one days, and by reason of said defective and insufficient pleading the State should not be permitted to recover penalties for more than one day, and of this special exception defendant prays the judgment of the Court.

28. Defendant specially excepts to plaintiff's petition in so far as it is thereby sought to recover fines or penalties of this defendant by

reason of any act or thing alleged to have been done or committed prior to the 22nd day of September, 1904, in alleged violation of the Anti-Trust Act of May 25, 1899, for the reason that since the plaintiff's original petition was not filed herein until the 22nd day of September, 1906, it appears from the face of the plaintiff's pleadings that plaintiff's cause of action, if any it ever had as to such fines or penalties, accrued more than two years before the filing of this suit, and is therefore barred by the Statute of limitation of two years as prescribed in Article 219 of the Code of Criminal Procedure of the State of Texas, which this defendant now here invokes by way of exception to defeat a recovery of such fines and penalties, and of this defendant prays the judgment of the Court.

29. Defendant further specially excepts to plaintiff's petition in so far as it is thereby sought to cancel the permit of this defend-
96 ant to do business in the State of Texas by reason of any act or thing alleged to have been done or committed prior to the 22nd day of September, 1904, in alleged violation of the Anti-Trust Act of May 25, 1899, for the reason that since this suit was not filed until the 22nd day of September, 1906, it appears from the face of the plaintiff's pleadings that the plaintiff's cause of action, if any it ever had, to cancel defendant's permit to do business in Texas is barred by the Statute of Limitation of two years as prescribed in Article 219 of the Code of Criminal Procedure of the State of Texas, which this defendant here now invokes by way of exception to defeat the cancellation of the permit of this defendant to do business in the State of Texas, and of this the defendant prays the judgment of the Court.

30. Defendant further specially excepts to plaintiff's petition and says that if the Statute of Limitations of two years as prescribed in Article 219 of the Code of Criminal procedure of the State of Texas, the benefit of which this defendant invokes in special exceptions numbered 28 and 29, is not available to this defendant, this defendant will be denied the equal protection of the laws, and said Anti-Trust Act of May 25, 1899, is void as a whole, in violation of that part of Section 1 of the 14th Amendment to the Constitution of the United States which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws, since, if a natural person charged with the violation of said Anti-Trust Act of May 25th, 1899, should be prosecuted by proceedings criminal in form for violating said Anti-Trust Act of May 25, 1899, or any of its provisions, which would be a proper form of proceeding, the prosecution against him would be barred by said Article 219, and of this the defendant prays the judgment of the Court.

97 31. Defendant further specially excepts to plaintiff's petition and says that if the Statute of Limitation of two years as prescribed in Article 219 of the Code of Criminal Procedure of Texas, the benefit of which this defendant invokes in special exceptions numbered 28 and 29, is not available to this defendant, and if no period of limitation bars suits to recover fines or penalties or suits to forfeit permits under said Act of May 25, 1899, this defendant will be denied the equal protection of the laws, and said Anti-Trust

Act of May 25, 1899, is void as a whole, in violation of that part of Section 1 of the 14th Amendment to the Constitution of the United States that provides that no state shall deny to any person within its jurisdiction the equal protection of the laws, since every cause of action or offense below the grade of felony, arising from the violation of every other penal or criminal statute of this State would be barred by said Article 219 as to all natural persons and corporations, and of this the defendant prays the judgment of the Court.

32. Defendant further specially excepts to plaintiff's petition in so far as it thereby sought to recover fines or penalties by reason of any act or thing alleged to have been done or committed prior to the 22nd day of September, 1904, in alleged violation of the Anti-Trust Act of May 25, 1899, for the reason that since plaintiff's original petition was not filed herein until the 22nd day of September, 1906, it appears from the face of the plaintiff's pleadings that plaintiff's cause of action, if any it ever had, as to such fines or penalties accrued more than two years before the filing of this suit and is therefore barred by the Statute of Limitation of two years as prescribed in Article 2354, Revised Civil Statutes of the State of Texas, which this defendant now here invokes by way of
98 exception to defeat a recovery of such fines or penalties, and of this the defendant prays the judgment of the Court.

33. Defendant further specially excepts to plaintiff's petition in so far as it is thereby sought to cancel the permit of this defendant to do business in the State of Texas by reason of any act or thing alleged to have been done or committed prior to the 22nd day of September, 1904, in alleged violation of the Anti-Trust Act of May 25th, 1899, for the reason that since this suit was not filed until the 22nd day of September, 1906, it appears from the face of the plaintiff's pleadings that the plaintiff's cause of action, if any it ever had, to cancel this defendant's permit to do business in Texas is barred by the Statute of Limitations of two years as prescribed in Article 3354 Revised Civil Statutes of Texas, which defendant now here invokes by way of exception to defeat the cancellation of the permit of this defendant to do business in the State of Texas, and of this the defendant prays the judgment of the Court.

34. Defendant further specially excepts to plaintiff's petition and says that if the Statute of Limitation of two years as prescribed in Article 3354 Revised Civil Statutes of Texas, the benefit of which this defendant invokes in special exceptions numbered 32 and 33, is not available to this defendant, and if no period of limitation bars suits to recover fines or penalties, or suits to forfeit permits under said Act of May 25, 1899, this defendant, if plaintiff's cause of action is — a civil nature, will be denied the equal protection of the laws, and said Anti-Trust Act of May 25, 1899, is void as a whole, in violation of that part of Section 1 of the 14th Amendment to the Constitution of the United States which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws, since, if plaintiff's cause of action is of a civil nature,
99 the only class of actions of a civil nature for the recovery of a personal judgment except those governed by Articles

3353, 3356 and 3358, Revised Civil Statutes of Texas, in which the benefit of said Article 3354, Revised Civil Statutes of Texas, is denied to a defendant, is that class arising under said anti-trust act of May 25, 1899, and of this the defendant prays the judgment of the Court.

35. Defendant further excepts to plaintiff's petition in so far as it is thereby sought to recover fines or penalties of this defendant by reason of any act or thing alleged to have been done or committed prior to the 22nd day of September, 1902, in alleged violation of the anti-trust Act of May 25, 1899, for the reason that since the plaintiff's original petition was not filed herein until the 22nd day of September, 1903, it appears from the face of the plaintiff's pleadings that the plaintiff's cause of action, if any it ever had, as to such fines or penalties accrued more than four years before the filing of this suit, and is therefore barred by the statute of limitation of four years as prescribed in Article 3358, Revised Civil Statutes of Texas, which this defendant now here invokes by way of exception to defeat a recovery of such fines or penalties, and of this the defendant prays the judgment of the court.

36. Defendant further specially excepts to plaintiff's petition in so far as it is thereby sought to cancel the permit of this defendant to do business in the State of Texas by reason of any act or thing alleged to have been done or committed prior to the 22nd day of September, 1902, in alleged violation of the Anti-trust Act of May 25, 1899, for the reason that since this suit was not filed until the 22nd day of Septeber, 1903, it appears from the face of the plaintiff's pleadings that the plaintiff's cause of action, if any it ever had, to cancel defendant's permit to do business in Texas is barred by
100 the Statute of Limitation of four years prescribed in Article 3358 Revised Civil Statutes of Texas, which this defendant here now invokes by way exception to defeat the concellation of the permit of this defendant to do business in the State of Texas, and of this the defendant prays the judgment of the Court.

37. Defendant further specially excepts to plaintiff's petition and says that if the Statute of Limitation of four years as prescribed in Article 3358, Revised Civil Statutes of Texas, the benefit of which this defendant invokes in special exceptions numbered 35 and 36, is not available to this defendant, and if no period of limitation bar suits to recover fines or penalties, or suits to forfeit permits under said Act of May 25, 1899, this defendant will be denied the equal protection of the laws, and said Anti-trust act of May 25, 1899, is void as a whole, in violation of that part of Section 1 of the 14th Amendment to the Constitution of the United States which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws, since, if plaintiff's cause of action is of a civil nature, the only class of actions of a civil nature for the recovery of a personal judgment, except those governed by Articles 3353, 3354, and 3356 Revised Civil Statutes of Texas, in which the benefit of said Articles 3358, Revised Civil Statutes of Texas, is denied to a defendant, is that class arising under said anti-trust act of

May 25, 1899, and of this the defendant prays the judgment of the Court.

38. Defendant specially excepts to plaintiff's petition in so far as it is thereby sought to recover fines or penalties of this defendant by reason of any act or thing alleged to have been done or committed prior to the 22nd day of September, 1904, in alleged violation of the anti-trust act of March 31, 1903, for the reason that since the plaintiff's original petition was not filed herein until the
101 22nd day of September, 1906, it appears from the face of the plaintiff's pleadings that plaintiff's cause of action, if any it ever had as to such fines or penalties, accrued more than two years before the filing of this suit, and is therefore barred by the Statute of Limitation of two years as prescribed in Article 219 of the Code of Criminal Procedure of the State of Texas, which this defendant now here invokes by way of exception to defeat a recovery of such fines and penalties, and of this defendant prays the judgment of the Court.

39. Defendant further specially excepts to plaintiff's petition in so far as it is thereby sought to cancel the permit of this defendant to do business in the State of Texas by reason of any act or thing alleged to have been done or committed prior to the 22nd day of September, 1904, in alleged violation of the Anti-Trust Act of March 31, 1903, for the reason that since this suit was not filed until the 22nd day of September, 1906, it appears from the face of the plaintiff's pleadings that the plaintiff's cause of action, if any it ever had, to cancel defendant's permit to do business in Texas is barred by the Statute of Limitation of two years as prescribed in Article 219 of the Code of Criminal Procedure of the State of Texas, which this defendant now here invokes by way of exception to defeat the cancellation of the permit of this defendant to do business in the State of Texas, and of this the defendant prays the judgment of the Court.

40. Defendant further specially excepts to plaintiff's petition and says that if the Statute of Limitation of two years as prescribed in Article 219 of the Code of Criminal Procedure of the State of Texas, the benefit of which this defendant invokes in special exceptions numbered 38 and 39, is not available to this defendant,
102 this defendant will be denied the equal protection of the laws, and said Anti-Trust Act of March 31, 1903, is void as a whole, in violation of that part of Section 1 of the 14th Amendment to the Constitution of the United States which provides that no State shall deny to any persons within its jurisdiction the equal protection of the laws, since, if a natural person charged with the violation of said Anti-Trust Act of March 31, 1903 should be prosecuted by proceedings, criminal in form, for violating said Anti-Trust Act of March 31, 1903, or any of its provisions, which would be a proper form of proceeding, the prosecution against him would be barred by said Article 219 and of this the defendant prays the judgment of the Court.

41. Defendant further specially excepts to plaintiff's petition and says that if the Statute of Limitation of two years as prescribed in Article 219 of the Code of Criminal Procedure of Texas, the benefit

of which this defendant invokes in special exceptions numbered 38 and 39, is not available to this defendant, and if no period of limitation bars suits to recover fines or penalties or suits to forfeit permits under said Act of March 31, 1903, this defendant will be denied the equal protection of the laws, and said Anti-Trust Act of March 31, 1903, is void as a whole, in violation of that part of Section 1 of the 14th Amendment to the Constitution of the United States that provides that no state shall deny to any person within its jurisdiction the equal protection of the laws, since every cause of action or offense below the grade of felony arising from the violation of every other penal or criminal statute of this State would be barred by said Article 219 as to all natural persons and corporations, and of this the defendant prays the judgment of the Court.

42. Defendant further specially excepts to plaintiff's petition in so far as it is thereby sought to recover fines or penalties by reason of any act or thing alleged to have been done or committed prior to the 22nd day of September, 1904, in alleged violation of the Anti-Trust Act of March 31, 1903, for the reason that since plaintiff's original petition was not filed herein until the 22nd day of September, 1906, it appears from the face of the plaintiff's pleadings that plaintiff's cause of action, if any it ever had, as to such fines or penalties accrued more than two years before the filing of this suit and is therefore barred by the Statute of Limitation of two years as prescribed in Article 3354, Revised Civil Statutes of the State of Texas, which this defendant now here invokes by way of exception to defeat a recovery of such fines or penalties, and of this the defendant prays the judgment of the Court.

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43. Defendant further specially excepts to plaintiff's petition in so far as it is thereby sought to cancel the permit of this defendant to do business in the State of Texas by reason of any act or thing alleged to have been done or committed prior to the 22nd day of September, 1904, in alleged violation of the Anti-Trust Act of March 31, 1903, for the reason that since this suit was not filed until the 22nd day of September, 1906, it appears from the face of the plaintiff's pleadings that the plaintiff's cause of action, if any it ever had, to cancel this defendant's permit to do business in Texas is barred by the Statute of Limitation of two years as prescribed in Article 3354 Revised Civil Statutes of Texas, which defendant now here invokes by way of exception to defeat the cancellation of the permit of this defendant to do business in the State of Texas, and of this the defendant prays the judgment of the Court.

44. Defendant further specially excepts to plaintiff's petition and says that if the Statute of Limitation of two years as prescribed in Article 3354, Revised Civil Statute of Texas, the benefit of which this defendant invokes in special exceptions numbered 42 and 43, is not available to this defendant, and if no period of limitation bears suits to recover fines or penalties, or suits to forfeit permits under said Act of March 31, 1903, this defendant, if this suit is of a civil nature, will be denied the equal protection of the laws, and said Anti-Trust Act of March 31, 1903, is void as a whole, in violation of that part of Section 1 of the 14th Amendment to the Constitution of the United States which provides that no

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state shall deny to any person within its jurisdiction the equal protection of the laws, since, if plaintiff's cause of action is of a civil nature, the only class of actions of a civil nature, for the recovery of a personal judgment except those governed by Articles 3353, 3356, and 3358, Revised Civil Statutes of Texas, in which the benefit of said Srticle 3354, Revised Civil Statutes of Texas, is denied to a defendant, is that class arising under said Anti-Trust Act of March 31, 1903, and of this the defendant prays the judgment of the Court.

45. Defendant specially excepts to plaintiff's petition in so far as it is thereby sought to recover fines or penalties of this defendant by reason of any act or thing alleged to have been done or committed prior to the 22nd day of September, 1903, in alleged violation of said Anti-Trust Act of March 31, 1903, for the reason that since plaintiff's original petition was not filed herein until the 22nd day of September, 1906, it appears from the face of the plaintiff's pleadings that the plaintiff's cause of action, if any it ever had, as to suche fines or penalties accrued more than three years before the filing of this suit and is therefore barred by the Statute of Limitation of three years as prescribed in Article 218 of the Code of Criminal Procedure of the State of Texas, which defendant now here invokes by way of
105 exception to defeat a recovery of such fines and penalties, and of this the defendant prays the judgment of the Court.

46. Defendant further specially excepts to plaintiff's petition in so far as it thereby sought to cancel the permit of this defendant to do business in the State of Texas by reason of any act or thing alleged to have been done or committed prior to the 22nd day of September, 1903, in alleged violation of the Anti-Trust Act of March 31, 1903, for the reason that since this suit was not filed until the 22nd day of September, 1906, it appears from the face of the plaintiff's pleadings that plaintiff's cause of action, if any it ever had, to cancel defendant's permit to do business in this State is barred by the Statute of Limitation of three years as prescribed in Article 218 of the Code of Criminal Procedure of the State of Texas, which this defendant now here invokes by way of exception to defeat the cancellation of the permit of this defendant to do business in th*at* State of Texas, and of this the defendant prays the judgment of the Court.

47. Defendant further specially excepts to plaintiff's petition and says that if the Statute of Limitation of three years as prescribed in Article 218 of the Code of Criminal Procedure of the State of Texas, the benefit of which this defendant invokes in special exceptions numbered 45 and 46, is not available to this defendant, this defendant will be denied the equal protection of the laws, and the said Anti-Trust Act of March 31, 1903, is void as a whole, in violation of that part of Section 1 of the 14th Amendment to the Constitution of the United States which provides that no State shall deny to any person within its jurisdiction the equal protection of the laws, since, if a natural person charged with the violation of said Anti-Trust Act of March 31, 1903, should be prosecuted foor a felony for violat-
106 ing said act as is authorized by Section 13 thereof, the prosecution against him would be barred in three years by said Article 218, and of this the defendant prays the judgment of the Court.

48. Further specially excepting to plaintiff's petition, this defendant says that so much thereof as seeks to recover penalties for an alleged violation of the Anti-Trust Law of the State of Texas, approved May 25, 1899, of the Acts of 1899, is insufficient in law, because:

a. The said act of May 25, 1899, does not, by the first section thereof, or any part of said section, wherein it purports to define a conspiracy to defraud, define any offense against the laws of the State of Texas, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon the alleged infraction of the provisions of said first section of said act, would be in viloation of Article 3, of the General Provisions of the Penal Code of the State of Texas, which declares that no person shall be punished for any act or omission unless the same is made a penal offense and a penalty is affixed thereto by the written law of this State.

b. The said act of May 25, 1899, does not by the first section thereof, or any part of said section, wherein it purports to define a conspiracy to defraud, define any offense against the laws of the State of Texas in that it is so indefinitely framed and of such doubtful meaning that it cannot be understood, either from the language in which it is expressed, or from any other written law of the State, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon the alleged infraction of the provisions of said first section of said act, would be in violation of Article 6 of the general provisions of the Penal Code of the
107 State of Texas, which prescribes that whenever it appears that a provision of the Penal Law is so indefinitely framed or of such doubtful construction that it cannot be understood, either from the language in which it is expressed, or from some other written law of the State, such penal law shall be regarded as wholly in-operative.

c. The said Act of May 25, 1899, does not, by the first section thereof, or any part of said section, wherein it purports to define a conspiracy to defraud, define any offense against the laws of the State of Texas, in that no offense is designated by the plain import of the words of said first section, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon the alleged infraction of the provisions of said first section of said act, would be in violation of that part of Article 9, of the general provisions of the Penal Code of the State of Texas, which prescribes that no person shall be punished for an offense not made penal by the plain import of the words of the law.

d. The said Act of May 25, 1899, does not, by the second section thereof, or any part of said section, wherein it purports to define a monopoly and to render the same unlawful and against public policy, and to make persons and corporations engaged therein guilty of a conspiracy to defraud, define any offense against the laws of the State of Texas, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon the second section of said act, would be in violation of Article 3 of the general provisions of the Penal Code of the State of Texas, which declares that no person shall be punished for any act or omission unless the same is made a penal

offense and a penalty affixed thereto by the written law of this State.

e. The said Act of May 25, 1899, does not, by the second section thereof, or any part of said section, wherein it purports to
108 define a monopoly and to render the same unlawful and against public policy, and to make persons and corporations engaged therein guilty of a conspiracy to defraud, define any offense against the laws of the State of Texas in that it is so indefinitely framed and of such doubtful meaning that it cannot be understood, either from the language in which it is expressed, or from any other written law of the State, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon the alleged infraction of the provisions of said second section of said act, would be in violation of Article 6 of the general provisions of the Penal Code of the State of Texas, which prescribes that whenever it appears that a provision of the Penal Law is so indefinitely framed or of such doubtful construction that it cannot be understood, either from the language in which it is expressed, or from some other written law of the State, such penal law shall be regarded as wholly inoperative.

f. The said Act of May 25, 1899, does not, by the second section thereof, or any part of said section, wherein it purports to define a monopoly and to render the same unlawful and against public policy, and to make persons and corporations engaged therein guilty of a conspiracy to defraud, define any offense against the laws of the State of Texas in that no offense is designated by the plain import of the words of said second section, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon the alleged infraction of the provisions of said second section of said act, would be in violation of that part of Article 9 of the general provisions of the Penal Code of the State of Texas which prescribes that no person shall be punished for an offense nor made penal by the plain import of the words of the law.

g. The said Act of May 25, 1899, does not, by the third section thereof, or any part of said section, wherein it purports to
109 define a conspiracy to form or secure a trust or monopoly in restraint of trade, nor by the fourth section thereof, or any part of said section, wherein it purports to define a conspiracy to form or secure a trust or monopoly in restraint of trade, nor by the sixth section thereof, or any part of said section, wherein it purports to define a conspiracy to defraud, define any offense against the laws of the State of Texas, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon the alleged infraction of the provisions of said third, fourth and sixth sections of said acts or any of them, would be in violation of Article 3 of the general provisions of the Penal Code of the State of Texas which declares that no person shall be punished for any act or omission unless the same is made a penal offense and a penalty is affixed thereto by the written law of this State.

h. The said act of May 25, 1899, does not, by the third section thereof, or any part of said section, wherein it purports to define a conspiracy to form or secure a trust or monopoly in restraint of

trade, nor by the fourth section thereof, or any part of said section, wherein it purports to define a conspiracy to form or secure a trust or monopoly in restraint of trade, nor by the sixth section thereof, or any part of said section, wherein it purports to define a conspiracy to defraud, define any offense against the laws of the State of Texas in that it is so indefinitely framed and of such doubtful meaning that it cannot be understood, either from the language in which it is expressed, or from any other written law of the State, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon the alleged infraction of the provisions of said third, fourth and sixth sections of said act, would be in violation of Article 6 of the general provisions of the Penal Code of the State of
110 Texas, which prescribes that whenever it appears that a provision of the Penal Law is so indefinitely framed or of such doubtful construction that it cannot be understood, either from the language in which it is expressed, or from some other written law of the State, such penal law shall be regarded as wholly inoperative.

i. The said Act of May 25, 1899, does not, by the third section thereof, or any part of said section, wherein it purports to define a conspiracy to form or secure a trust or monop-ly in restraint of trade, nor by the fourth section thereof, or any part of said section, wherein it purports to define a conspiracy to form or secure a trust or monop-ly in restraint of trade, nor by the sixth section thereof, or any part of said section, wherein it purports to define a conspiracy to defraud, define any offense against the laws of the State of Texas in that no offense is designated by the plain import of the words of said third, fourth and sixth sections, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon the alleged infraction of the provisions of said third, fourth and sixth sections of said act, would be in violation of that part of Article 9 of the general provisions of the Penal Code of the State of Texas, which prescribes that no person shall be punished for an offense not made penal by the plain import of the words of the law.

And of all this the defendant prays the judgment of the Court.

49. Further specially excepting to plaintiff's petition, this defendant says that so much thereof as seeks to recover penalties for an alleged violation of the Anti-Trust Law of the State of Texas, approved March 31, 1903, is insufficient in law, because:

a. The said Act of March 31, 1903, does not, by the first section thereof, or any part of said section, wherein it purports to
111 define a trust, define any offense against the laws of the State of Texas, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon the alleged infraction of the provisions of the first section of said act, would be in violation of Article 3 of the general provisions of the Penal Code of the State of Texas, which declares that no person shall be punished for any act or omission unless the same is made a penal offense and a penalty is affixed thereto by the written law of this State.

b. The said act of March 31, 1903, does not, by the first section thereof, wherein it purports to define a trust, define any offense against the laws of the State of Texas in that it is so indefinitely

framed and of such doubtful meaning that it can not be understood, either from the language in which it is expressed, or from any other written law of the State, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon an alleged infraction of the provisions of said first section of said act, would be in violation of Article 6 of the General provisions of the Penal Code of the State of Texas, which prescribes that whenever it appears that a provision of the Penal Law is so indefinitely framed or of such doubtful construction that it cannot be understood, either from the language in which it is expressed, or from some other written law of the State, such penal law shall be regarded as wholly inoperative.

c. The said Act of March 31, 1903, does not, by the first section thereof, or any part of said section, wherein it purports to define a trust, define any offense against the laws of the State of Texas in that no offense is designated by the plain import of its words, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon the alleged infraction of the provisions
112 of said first section of said act, would be in violation of that part of Article 9 of the general provisions of the Penal Code of the State of Texas, which prescribes that no person shall be punished for an offense not made penal by the plain import of the words of the law.

d. The said act of March 31, 1903, does not, by the second section thereof, or any part of said section, wherein it purports to define a monopoly define any offense against the laws of the State of Texas, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon the alleged infraction of the provisions of said second section of said act, would be in violation of Article 3 of the general provisions of the Penal Code of the State of Texas, which declares that no person shall be punished for any act or omission unless the same is made a penal offense and a penalty is affixed thereto by the written law of this State.

e. The said Act of March 31, 1903, does not by the second section thereof, or any part of said section, wherein it purports to define a monopoly, define any offense against the laws of the State of Texas in that it is so indefinitely framed and of such doubtful meaning that it cannot be understood, either from the language in which it is expressed, or from any other written law of the State, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon the alleged infraction of the provisions of said second section of said act, would be in violation of Article 6 of the Penal Code of the State of Texas, which prescribes that whenever it appears that a provision of the Penal Law is so indefinitely framed, or of such doubtful construction that it cannot be understood, either from the language in which it is expressed, or from some other written law of the State, such penal law shall be regarded as wholly inoperative.

113 *f.* The said Act of March 31, 1903, does not, by the second section thereof, or any part of said section, wherein it purports to define a monopoly, define any offense against the laws of the State of Texas in that no offense is designated by the plain im-

port of its words, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon the alleged infraction of the provisions of said second section of said act, would be in violation of that part of Article 9 of the general provisions of the Penal Code of the State of Texas, which prescribes that no person shall be punished for an offense not made penal by the plain import of the words of the law.

g. The said Act of March 31, 1903, does not, by the third section of said act, or any part thereof, wherein it purports to define a conspiracy in restraint of trade, define any offense against the laws of the State of Texas, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon the alleged infraction of the provisions of said third section of said act, would be in violation of Article 3 of the general provisions of the Penal Code of the State of Texas and a penalty is affixed thereto by the written law of this State.

h. The said act of March 31, 1903, does not, by the third section of said act, or any part thereof, wherein it purports to define a conspiracy in restraint of trade, define any offense against the laws of the State of Texas in that it is so indefinitely framed and of such doubtful meaning that it cannot be understood, either from the language in which it is expressed, or from any other written law of the State, and to permit and sanction the prosecution of this suit, in so far as it is based upon the alleged infraction of the provisions of said third section of said act, would be in violation of Article 6
114 of the Penal Code of the State of Texas, which prescribes that whenever it appears that a provision of the Penal Law is so indefinitely framed, or of such doubtful construction that it cannot be understood, either from the language in which it is expressed, or from some other written law of the State, such penal law shall be regarded as wholly inoperative.

i. The said act of March 31, 1903, does not, by the third section of said act, or any part thereof, wherein it purports to define a conspiracy in restraint of trade, define any offense against the laws of the State of Texas in that no offense is designated by the plain import of its words, and therefore to permit and sanction the prosecution of this suit, in so far as it is based upon the alleged infraction of the provisions of said third section of said act, would be in violation of that part of Article 9 of the general provisions of the Penal Code of the State of Texas, which prescribed that no person shall be punished for an offense not made penal by the plain import of the words of the law.

And of all this the defendant prays the judgment of the Court.

50. Defendant further specially excepts to plaintiff's petition in so far as it is thereby sought to cancel defendant's permit to do business in Texas by reason of any act or thing alleged to have been done or committed in alleged violation of the Anti-trust Act of May 25, 1899, since, under Section 7 of said act, the forfeiture of the right of a corporation, created and organized under the laws of any other State, to do business in Texas is made dependent upon its violation of some one or more of the preceding sections of said

act, and since, for the reasons set forth in the foregoing special exception, Nos. 48 and 49, said Act of May 25, 1899, does not, in the provisions thereof invoked by the plaintiff in this case, sufficiently define any offense against the laws of Texas to render
115 this defendant guilty of violating any of its provisions, and of this the defendant prays the judgment of the Court.

51. Defendant further specially excepts to plaintiff's petition in so far as it is thereby sought to cancel defendant's permit to do business in the State of Texas by reason of any act or thing alleged to have been done or committed in alleged violation of the Anti-trust act of March 31, 1903, since, under Sections 8 and 10 of said Act, the forfeiture of the right of a corporation, created and organized under the laws of any other state, to do business in Texas is made dependent upon its violation of some one or more *the* the provisions of the preceding sections of said act, and since, for the reasons set forth in the foregoing special exceptions, Nos. 48 and 49, said act of March 31, 1903, does not, in the provisions thereof invoked by the plaintiff in this case, sufficiently define any offense against the laws of Texas to render this defendant guilty of violating any of its provisions, and of this the defendant prays the judgment of the Court.

52. Further specially excepting to plaintiff's petition, this defendant says that the same is insufficient in law, in so far as it seeks to recover penalties for a violation of the provisions of the Anti-Trust Act of May 28, 1899, since by reason of the same's being so indefinitely framed and of such doubtful construction that it cannot be understood, either from the language in which it is expressed, or from some other written law of the State, and by reason of its failure to designate an offense by the plain import of its words, the infliction of the penalties prescribed by said act would be the taking of property without due process of law in contravention of Section 19, Article 1, of the Constitution of the State of Texas, which prescribes that no citizen of this State shall be de-
116 prived of property except by due course of the law of the land, and also in contravention of that part of Section 1 of the 14th Amendment to the Constitution of the United States, which provides that no state shall deprive any person of property without due process of law, and of this the defendant prays the judgment of the Court

53. Further specially excepting to plaintiff's petition, this defendant says that the same is insufficient in law, in so far as it seeks to recover penalties for a violation of the provisions of the Anti-trust Act of March 31, 1903, since by reason of the same's being so indefinitely framed and of such doubtful construction that it cannot be understood, either from the language in which it is expressed, or from some other written law of the State, and by reason of its failure to designate an offense by the plain import of its words, the infliction of the penalties prescribed by said act would be the taking of property without due process of law in contravention of Section 19, Article 1, of the Constitution of the State of Texas, which prescribes that no citizen of this State shall be deprived of property

except by the due course of the law of the land, and also in contravention of that part of Section 1, of the 14th Amendment of the Constitution of the United States, which provides that no state shall deprive any person of property without due process of law, and of this the defendant prays the judgment of the Court.

54. Further specially excepting to plaintiff's petition, this defendant says that same is insufficient in law, in so far as it seeks to recover penalties for an alleged violation of the Anti-Trust Act of March 31, 1903, for the reason that said act is a criminal law and under its terms any person violating any one of its provisions may, for a single violation thereof, be twice tried and twice put in
117 jeopardy for the same act and be subject to two different and distinct penalties for the same act, in violation of Section 14 of Article 1 of the Constitution of Texas, which provides that no person, for the same offense shall be twice put in jeopardy of life or liberty, nor shall any person be again put upon trial for the same offense after a verdict of not guilty in a court of competent jurisdiction, and of this the defendant prays the judgment of the Court.

55. Further specially excepting to plaintiff's petition, this defendant says that the same is insufficient in law, in so far as it seeks to recover penalties by reason of the alleged violation of the Anti-Trust Act of March 31, 1903, for the reason that said Act confers upon the Attorney General, or the District or County Attorney of Travis County, under his direction, power to discriminate between persons in the enforcement of its provisions, since they may, by their election, prevent the inflicting upon one person of a greater punishment for the violation of its provisions that a fine of $50.00 per day, while they may elect to have another person violating its provisions indicted and convicted of a felony and confined in the penitentiary in any term from one to ten years; therefore, said act does not guarantee to all persons within the State the equal protection of the law, nor does it secure the inflicting of the same character of punishment upon all persons within the jurisdiction of the State who are guilty of violating its provisions, but leaves it to the aforesaid officers to determine arbitrarily and capriciously the kind of offense, of which any person violating its provisions, is guilty, and the punishment that may be inflicted for such violation, is violation of Section 3, of Article 1 of the Constitution of Texas, which provides that all free men when they form a social compact have equal rights, and no man or set of men is entitled to exclusive separate public emoluments or privileges but in consideration of public services,
118 and of Section 19 of Article 1 of the Constitution of the State of Texas, which provides that no citizen of this State shall be deprived of life, liberty, property, privileges or immunities except by the due course of the law of the land, and of that part of Section 1 of the 14th Amendment to the Constitution of the United States which provides that no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, and of this the defendant prays the judgment of the Court.

56. Defendant excepts to Sub-division II of plaintiff's petition and all the allegations therein contained, for the reason that all such

allegations are immaterial and irrelevant to any issue in this case, and of this special exception defendant prays the judgment of the Court.

57. Defendant excepts to Sub-division III of plaintiff's petition and all the allegations therein contained, for the reason that all such allegations are immaterial and irrelevant to any issue in this case, and of this special exception defendant prays the judgment of the Court.

58. Defendant excepts to Sub-division IV of plaintiff's petition and all the allegations therein contained, for the reason that all such allegations are immaterial and irrelevant to any issue in this case, and of this special exception defendant prays the judgment of the Court.

59. Defendant excepts to the said alleged trust agreements marked Exhibit "A" and Exhibit "B," and set out in plaintiff's petition on pages 9 to 23, inclusive, thereof, for the reason that said alleged trust agreements are immaterial and irrelevant to any issue in this case, and for the additional reason that it appears from said alleged trust agreements that this defendant was not a party to said alleged agreements and did not join in the execution thereof,
119 and the allegations in plaintiff's petition to the effect that this defendant did join in the execution of said alleged trust agreements are contradicted by said alleged trust agreements so set up in plaintiff's petition, which show upon their face that this defendant did not join in said alleged trust agreements and was not a party to the execution thereof, and for the additional reason that it appears from plaintiff's petition that said alleged trust agreements were made and entered into more than eighteen years before the organization of this defendant, and of this defendant prays the judgment of the Court.

60. Defendant excepts to all the allegations contained in the fourth, fifth, sixth, seventh, eighth, ninth and tenth paragraphs of Sub-division III of plaintiff's petition, and says that all of such allegations are irrelevant and immaterial to any issue in this cause and show no cause of action against this defendant, and that if such allegations, or any of them, have any relation to this case they are matters of evidence merely and should not be incorporated in plaintiff's petition, and of this defendant prays judgment of the Court.

61. Defendant excepts to all the allegations contained in Sub-division V. of plaintiff's petition, and says that the same are immaterial and irrelevant to any issue in this case and show no cause of action against this defendant, and of this defendant prays judgment of the Court.

62. Defendant excepts to all the allegations contained in paragraph 9 of said Sub-division V of plaintiff's petition, and says that the same are immaterial and irrelevant to any issue in this cause and show no cause of action against this defendant, and if the said matters so alleged have any relation to this case, they are matters of evidence merely and should not be incorporated in plaintiff's petition, and of this defendant prays the judgment of the
120 Court.

63. Defendant excepts to all the allegations contained in

paragraph 10 of said Sub-division V of plaintiff's petition, and says that the same are immaterial and irrelevant to any issue in this case and show no cause of action against this defendant, and if the said matters so alleged have any relation in this case they are matters of evidence merely and should not be incorporated in plaintiff's petition, and of this defendant prays the judgment of the Court.

64. Defendant excepts to all the allegations contained in paragraph 11 of said Sub-division V of plaintiff's petition, and says that the same are immaterial and irrelevant to any issue in this cause, and show no cause of action against this defendant, and if the said matters so alleged have any relation to this case they are matters of evidence merely and should not be incorporated in plaintiff's petition, and of this defendant prays the judgment of the Court.

65. Defendant excepts to all the allegations contained in paragraph 13 of said Sub-division V of plaintiff's petition, and says that the same are immaterial and irrelevant to any issue in this case, and show no cause of action against this defendant, and if the said matters so alleged have any relation to this case they are matters of evidence merely and should not be incorporated in plaintiff's petition, and of this defendant prays the judgment of the Court.

66. Defendant specially excepts to the allegations contained in said paragraph 13 of Sub-division V of plaintiff's petition to the effect: "That in pursuance of this agreement and understanding, H. C. Pierce, acting for said Waters Pierce Oil Company and all the stockholders, directors and officers of the Waters-Pierce Oil Company, arranged with and employed attorneys, and with them went into the State of Texas, made an effort to dispose of the case
121 pending at Waco, and expended money therein and consulted with officers of the State with reference to the readmission of the Waters Pierce Oil Company into the State; that a course of procedure was determined upon which was carried out, as hereinbefore recited; that all sums of money paid and contracted to be paid by said Pierce were paid by the Waters Pierce Oil Company after the reputed reorganization and all the expenses incident to the said operations of Pierce and the attorneys aforesaid in Texas were so paid, and all of said expenses were thereafter audited and allowed by the Standard Oil Company," and says that the same are immaterial and irrelevant to any issue in this case and show no cause of action against this defendant, and if the said matters so alleged have any relation to this case they are matters of evidence merely and should not be incorporated in plaintiff's petition, and of this defendant prays the judgment of the Court.

67. Defendant specially excepts to all the allegations contained in Sub-division VI of plaintiff's petition, and says that the same are immaterial and irrelevant to any issue in this case and show no cause of action against this defendant, and if the said matters so alleged have any relation to this case they are matters of evidence merely and should not be incorporated in plaintiff's petition, and of this defendant prays the judgment of the Court.

68. Defendant specially excepts to all the allegations contained in Sub-division VII of plaintiff's petition, and says that the same are

immaterial and irrelevant to any issue in this case and show no cause of action against this defendant, and if the said matters so alleged have any relation to this case they are matters of evidence merely and should not be incorporated in plaintiff's petition, and of this defendant prays the judgment of the Court.

122 69. Defendant specially excepts to all the allegations contained in Sub-division VIII of plaintiff's petition, and says that the same are immaterial and irrelevant to any issue in this case and show no cause of action against this defendant, and if the said matters so alleged have any relation to this case they are matters of evidence merely and should not be incorporated in plaintiff's petition, and of this defendant prays the judgment of the Court.

70. Defendant specially excepts to the allegation contained in paragraph 2 of said Sub-division VIII of plaintiff's petition to the effect: "That this concern, to-wit, the Standard Oil Company, and its allied interests and subsidiary corporations, including defendant, in carrying out the conspiracies aforesaid, uses secret schemes and devious devices, conducting its business by codes unintelligible to ordinary persons, using stationery containing no information concerning its business other than "26 Broadway," sending out letters without address or signature to its component corporations," for the reason that said allegation is immaterial and irrelevant to any issue in this case and shows no cause of action against this defendant, and if the matters therein alleged have any relation to this cause they are matters of evidence merely and should not be incorporated in plaintiff's petition, and are calculated to inflame the minds of the jury trying this case against this defendant, and of this defendant prays the judgment of the Court.

71. Defendant excepts to all the allegations contained in paragraph 3 of said Sub-division VIII of plaintiff's petition, and says that the same are irrelevant and immaterial to this case and show no cause of action against this defendant, and if the matters therein alleged have any relation to this case they are matters of evidence only and should not be incorporated in plaintiff's petition,

123 and are calculated to inflame the minds of the jury trying this case against this defendant, and of this defendant prays the judgment of the Court.

72. Defendant excepts to all the allegations contained in paragraph 4 of said Sub-division VIII of plaintiff's petition, and says that the same are irrelevant and immaterial to any issue in this case and show no cause of action against this defendant, and if the matters therein alleged have any relation to this case they are matters of evidence merely and should not be incorporated in plaintiff's petition, and are calculated to inflame the minds of the jury trying this case against this defendant, and of this defendant prays the judgment of the Court.

73. Defendant excepts to all the allegations contained in paragraph 5 of said Subdivision VIII of plaintiff's petition, and says that the same are irrelevant and immaterial to any issue in this case and show no cause of action against this defendant, and if the matters therein alleged have any relation to this case they are matters of evi-

dence only and should not be incorporated in plaintiff's petition, and are calculated to inflame the minds of the jury trying this case against this defendant, and of this defendant prays the judgment of the Court.

74. Defendant excepts to all the allegations contained in paragraph 6 of said Sub-division VIII of plaintiff's petition, and says that the same are irrelevant and immaterial to any issues in this case and show no cause of action against this defendant, and if the matters therein alleged have any relation to this case they are matters of evidence merely and should not be incorporated in plaintiff's petition, and are calculated to inflame the minds of the jury trying this case against this defendant, and of this defendant prays the judgment of the Court.

124 75. Defendant specially excepts to the allegation contained in plaintiff's petition to the effect: "That after May 31st, 1900, the Standard Oil Company placed upon the pay roll of Waters Pierce Oil Company one R. H. McNall under the designation of "Commercial Agent", and named his place of business as 75 New Street (which is the back door of the building known as 26 Broadway); that said McNall had been and thereafter continued to be a clerk in the office and under the control of H. M. Tilford. The duty performed by him with reference to the business of defendant was to permit the reports required by the Standard Oil Company of defendant to be addressed to him and to sign the letters of instructions as prepared by the officers of the Standard Oil Company and forward them to the Waters Pierce Oil Company, and the nominal change thus made in the business of the corporation was made for the purpose of rendereing more difficult a discovery of the falsity of the affidavit of said H. C. Pierce, and of more efficiently hiding the unlawful character of the business carried on by defendant and the Standard Oil Company and its allied interests, and carrying out the objects of the conspiracy herein set out," and says that all such allegations are immaterial and irrelevant to any issue in this case and show no cause of action against this defendant, and if such matters have any relation to this cause they are matters of evidence merely and should not be incorporated in plaintiff's petition, and are calculated to inflame the minds of the jury trying this case against this defendant, and of this defendant prays the judgment of the Court.

76. Defendant excepts to all the allegations contained in paragraph 7 of said Sub-division VIII of plaintiff's petition, and says that all such allegations are immaterial and irrelevant to any issue in this case and show no cause of action against this defend-

125 ant, and if such matters have any relation to this case they are matters of evidence merely and should not be incorporated in plaintiff's petition, and are calculated to inflame the minds of the jury trying this case against this defendant, and of this defendant prays the judgment of the Court.

77. Defendant specially excepts to the allegation contained in paragraph 9 of Sub-division VIII of plaintiff's petition to the effect: "That since May 31st, 1900, as before, and continuously and each day since the Waters Pierce Oil Company, for the purpose of carrying out the objects of the conspiracies aforesaid and of securing a

monopoly of the Oil business in Texas and of destroying all competition therein and of exacting from the people of Texas unreasonable and unconscionable prices for oil and the products of petroleum, has, as set forth in the succeeding paragraphs, bought out competing businesses, has maintained at a number of points oil selling concerns apparently in opposition to it, has made exclusive contracts with merchants by which they were prevented from handling the products of other companies, have cut prices below the costs of oil until competition was destroyed and then recouped by extraordinary increase of prices, has given rebates, gratuities and bribes, has in connection with the Standard Oil Company, maintained a system of spies, has corrupted the employés of railroads and other concerns," for the reason that the said allegations are immaterial and irrelevant to any issue in this casee and are impertinent and scandalous in their nature and calculated to inflame the minds of the jury trying this case against this defendant, and of this defendant prays the judgment of the Court.

78. Defendant specially excepts to all the allegations contained in plaintiff's petition, beginning on page 49, and beginning with the words, "That in further pursuance of the unlawful purposes
126 hereinbefore set forth, said Waters Pierce Oil Company," and ending with the words, "with reference to shipments into the Waters Pierce Oil Company territory," and says that all such allegations are immaterial and irrelevant to any issue in this case, and are scandalous and impertinent in their nature and are calculated to inflame the minds of the jury trying this case against this defendant, and of this defendant prays the judgment of the Court.

79. Defendant excepts to the allegations contained in plaintiff's petition on pages 51 and 52 thereof, to the effect: "That by virtue of the facts hereinbefore set out, the following, among other unlawful results have been accomplished:

"1. The Waters Pierce Oil Company, which alone has been granted a permit to do business, is dominated and controlled and its business dictated by the Standard Oil Company of New Jersey, which has not been granted a permit to do business in Texas.

"2. A large number of individuals and corporations doing business in the sale of oil and petroleum products are excluded from doing business in the state, and competition is lessened.

"3. The price of oil has been maintained at an ex*h*orbitant figure, being from ten to twenty-five per cent. higher than that of oil sold in the territory not claimed by defendant.

"4. Competition has been suppressed and business destroyed in the state by unconscionable and unfair means.

"5. A substantially complete monopoly in petroleum products has been established, the defendant having sold during during the period of ten years at least ninety-five per cent. of all petroleum products sold," and says that said allegations are statements of legal conclusions and arguments only, and are inflammatory in their nature and calculated to prejudice the minds of the jury trying this case against this defendant, and of this defendant prays the judgment of the Court.

127 80. Defendant specially excepts to the allegation contained in plaintiff's petition, on pages 52 and 53, to the effect: "That said corporation in pursuance of its business immediately established stations and officers in the counties, cities, towns and villages of Texas for the transaction of its business and supplying to the people of Texas oils and the products of petroleum, this in abuse of its corporate rights, franchises and powers, it forthwith began and has since maintained a war of extermination of all competition within this State as hereinbefore set forth; that it formed alliances and conspiracies with divers other corporations within and without this State as hereinbefore set forth whereby it was enabled to establish and has established a monopoly of said oil business in this State; that it has by a system of unfair competition and by various devices hereinbefore set forth, destroyed the business of its competitors; that at points where no competition existed said Waters Pierce Oil Company arbitrarily and for the purpose of recouping its losses at competitive points sold oils and the products at extraordinary and exhorbitant prices far above the true market value thereof, and by reason of its monopoly of said business wrought great oppression upon the people of this State," and says that said allegations are but legal conclusions and arguments, and are impertinent, scandalous and inflammatory in their nature, and are calculated to inflame the minds of the jury trying this case against this defendant, and of this defendant prays the judgment of the Court.

81. Defendant excepts to the allegation contained on page 38 of plaintiff's petition to the effectL "That all of said representations made by H. C. Pierce in said affidavit were false and fraudulent and known by him to be fraudulent at the time they were made, and were made by him for the purpos of deceiving the officers of
128 the State, and avoiding the judgment aforesaid and in pursuance and furtherance of the conspiracy hereinbefore alleged," for the reason that said allegation is immaterial and irrelevant to any issue in this case and is calculated to inflame the minds of the jury trying this case against this defendant, and of this defendant prays the judgment of the Court.

82. Defendant excepts to plaintiff's petition as a whole, and says that by reason of the matters complained of in the preceding special exceptions, Nos. 56 to 81, inclusive, plaintiff's petition, in its entirety, is in violation of Article 1183 of the Revised Statutes of the State of Texas, and is not a statement in logical and legal form of the facts constituting plaintiff's cause of action as required by said article, and is in violation of Rule 2 of the rules for District and County Courts of this state as prescribed by the Supreme Court of this State, and is not a statement of facts in contradistinction to a statement of legal conclusions and arguments as prescribed by said Rule, but, on the contrary, the petition is a statement of alleged facts so intermingled with irrelevant, impertinent, scandalous, and inflammatory matter, arguments and inconsistent averments as to produce confusion, uncertainty and unnecessary length in the petition, and on account of the arguments, legal conclusions, impertinent, scandalous and inflammatory matter therein set forth and excepted to in said special exceptions above named, is calculated to inflame the minds

of the jury trying this case against this defendant and to prevent justice being attained upon the trial of this case, and defendant says that said petition as a whole should be stricken out and plaintiff required to replead and to omit from its petition all such irrelevant, impertinent, scandalous and inflammatory matter and all such statements of evidence and legal conclusions and arguments, and of this defendant prays judgment of the court.

129 83. Defendant specially excepts to the allegation contained in page 54 of plaintiff's petition, and near the top of said page, to the effect: "And plaintiff says that defendant, a corporation transacting and conducting a business in this State, created, entered into and became a member of and a party to a pool, trust, agreement, combination, confederation, and understanding with another and other corporations and with individuals and persons to regulate and fix the price of an article of manufacture, merchandise and commodity," for the reason that said allegation is but a conclusion and is too general and uncertain to apprise this defendant of the facts thereby sought to be charged, and is further insufficient for the reason that it does not state when or with whom defendant so created, entered into and became a party to and a member of such pool, trust, agreement, combination, confederation and understanding, nor does it state with whom the same is charged to have been made, nor the article of manufacture, merchandise, or commodity the price of which is is alleged that it was thereby sought to regulate and fix, and of this defendant prays the judgment of the Court.

84. Defendant specially excepts to the allegation contained on page 54 of plaintiff's petition, to the effect: "And said defendant entered into and became a member of and a party to a pool, trust, agreement, combination, confederation and understanding with the Standard Oil Company, and its officers and agents, and many other corporations, the names of which plaintiff is unable to state, to regulate and fix the price of refined oils and the products of petroleum," for the reason that said allegation is but a conclusion and is too general and uncertain to apprise defendant of the facts thereby sought to be charged, and it does not state the facts constituting such alleged pool, trust, agreement, combination, confederation, or under-

130 standing, nor the time when the same is alleged to have been entered into, nor the agreement or understanding whereby it is alleged that it was sought to regulate the price of refined oil and the products of petroleum, and of this defendant prays the judgment of the Court.

85. Defendant specially excepts to the allegation on page 54 of plaintiff's petition, to the effect: "That defendant became, and was continuously from the 31st day of May, 1900, a monopoly," for the reason that such allegation is but a conclusion and the facts alleged to constitute defendant such a monopoly are not stated, and of this defendant prays judgment of the Court.

86. Defendant specially excepts to the allegation contained on page 54 of plaintiff's petition, to the effect: "That defendant * * * was a party to a union, combination, consolidation, and

affiliation of capital, property, assets, skill and acts by and between persons and corporations, to-wit: the Standard Oil Company, and its agents and employees, and other corporations aforesaid, and the defendant, and its agents and officers, to regulate and fix the price of an article of manufacture, merchandise, commodity and product of mining, to-wit, the price and the products of petroleum and to fix and limit the amount and quantity of such article, and to prevent competition in the sale and mining of said article," for the reason that said allegation is but a conclusion and is too general and uncertain to apprise defendant of the facts thereby sought to be charged, or of the facts which plaintiff will attempt to prove in support thereof, and for the further reason that the facts constituting such alleged union, combination, consolidation and affiliation of capital, credit, property, skill and acts are not stated, and of this defendant prays the judgment of the Court.

131 87. Defendant specially excepts to the allegation contained in plaintiff's petition and on page 54 thereof, to the effect: "The Standard Oil Company acquired and after the 31st day of May, 1900, retained with the consent of defendant company and its stockholders, the stock of said defendant," for the reason that said allegation is immaterial and irrelevant and shows no cause of action against this defendant, and of this defendant prays judgment of the Court.

88. Defendant specially excepts to the allegation in plaintiff's petition on pages 54 and 55 thereof: "And said defendant, being engaged in the buying and selling of the products of petroleum, entered into a pool, and trust, agreement, and combination, confederation, association and understanding by and with the Standard Oil Company of New Jersey and the corporations controlled by it to control and limit the trade in the products of petroleum and to limit competition in such trade," for the reason that said allegation is but a conclusion and is too general and uncertain to apprise defendant of the facts intended to be charged thereby, or of the facts which plaintiff will attempt to prove in support thereof, and for the further reason that the facts constituting such alleged pool trust, agreement and combination, confederation, association and understanding are not stated, and of this defendant prays judgment of the Court.

89. Defendant specially excepts to all the allegations in plaintiff's petition in the last paragraph thereof preceding the prayer for relief, wherein and whereby it is sought to charge this defendant with violations of the Act of March 31st, 1903, for the reason that said allegations are too vague, uncertain and indefinite in their nature to apprise this defendant of the facts sought to be charged as constituting such violations, in this, that the preceding portions

132 of plaintiff's petition are therein referred to as showing the acts constituting such alleged violations, and the preceding portions of plaintiff's petition so referred to are so confused, *duplicitious*, contradictory and voluminous that it is impossible to determine therefrom just what allegations contained therein, are, in said portion of the petition here excepted to, claimed by plaintiff to allege such violations, and of this defendant prays judgment of the Court.

This defendant denies all and singular the allegations in plaintiff's petition contained, and says that defendant is not guilty of the acts and wrong-doings in said petition charged against it or of any of them, and of this answer and plea it puts itself on the country.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. O'DELL,
N. A. STEDMAN,
Attorneys for Defendant.

J. D. JOHNSON,
H. S. PRIEST,
Of Counsel.

1. Specially answering said petition, this defendant says that the State of Texas ought not to recover any fines or penalties herein against this defendant because of any act or thing done or committed by this defendant prior to the 22nd day of September, 1904, by reason of its alleged violation of the Anti-Trust Act of May 25, 1899, in that the plaintiff's cause of action, if any it ever had,
133 for the recovery of such fines or penalties accrued more than two years before the filing of this suit, and is therefore barred by the Statute of Limitation of two years prescribed in Article 219 of the Code of Criminal Procedure of the State of Texas, which this defendant here specially pleads in bar of the plaintiff's right to recover such fines or penalties that accrued two years before the institution of this suit, and this the defendant is ready to verify.

2. Further specially answering said petition, this defendant says that the State of Texas ought not to recover judgment against this defendant cancelling its permit to do business in the State of Texas because of any act or thing done or committed by this defendant prior to the 22nd day of September, 1904, by reason of its alleged violation of the Anti-Trust Act of May 25, 1899, in that the plaintiff's cause of action, if any it ever had, for the cancellation of said permit to do business in the State of Texas accrued more than two years before the filing of this suit, and is therefore barred by the Statute of Limitation of two years prescribed in Article 219 of the Code of Criminal Procedure of the State of Texas, which this defendant here specially pleads in bar of the plaintiff's right to cancel said permit to do business in the State of Texas by reason of any act or thing occurring two years before the institution of this suit, and this the defendant is ready to verify.

3. Further specially answering herein, this defendant says that plaintiff ought not to recover judgment herein against this defendant, either for fines or penalties, or the cancellation of its permit to do business in the State of Texas, under the Anti-Trust Act of May 25, 1899, for the reason if the statute of limitation of two years, as prescribed in Article 219 of the Code of Criminal Procedure
134 of the State of Texas, the benefit of which this defendant invokes in paragraphs 1 and 2 of this special answer, is not available to this defendant, this defendant will be denied the equal protection of the laws, and said Anti-Trust Act of May 25, 1899, is

void as a whole, in violation of that part of Section 1 of the 14th Amendment to the Constitution of the United States which provides that no state shall deny to any persons within its jurisdiction the equal protection of the laws, since, if a natural person charged with the violation of said Anti-Trust Act of May 25, 1899, should be prosecuted by proceedings, criminal in form, for violating the said Anti-Trust Act of May 25, 1899, or any of its provisions, which would be a proper form of proceeding, the prosecution against him would be barred by said Article 219 of the Code of Criminal Procedure, and this the defendant is ready to verify.

4. Further specially answering said petition, this defendant says that plaintiff ought not to recover judgment herein against this defendant, either for fines or penalties or the cancellation of its permit to do business in the State of Texas under said Anti-Trust Act of May 25, 1899, for the reason that if the Statute of Limitation of two years, as prescribed in Article 219 of the Code of Criminal Procedure of Texas, the benefit of which this defendant invokes in Paragraphs 1 and 2 of this answer, is not available to this defendant, and if no period of limitation bars suits to recover fines or penalties, or suits to forfeit permits under said Act of May 25, 1899, this defendant will be denied the equal protection of the laws, and said Anti-Trust Act of May 25, 1899, is void as a whole, in violation of that part of Section 1 of the 14th Amendment to the Constitution of the United States, which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws, since every
135 cause of action or offense below the grade of felony, arising from every other penal or criminal statute of this State would be barred by said Article 219 of the Code of Criminal Procedure of Texas as to all persons and corporations, and this the defendant is ready to verify.

5. Further specially answering said petition, this defendant says that the State of Texas ought not to recover any fines or penalties herein against this defendant because of any act or thing done or committed by this defendant prior to the 22nd day of September, 1904, by reason of its alleged violation of the Anti-Trust Act of May 25, 1899, in that the plaintiff's cause of action, if any it ever had, for the recovery of such fines or penalties accrued more than two years before the filing of this suit and is therefore barred by the Statute of Limitation of two years prescribed in Article 3354, Revised Civil Statutes of Texas, which this defendant here specially pleads in bar of the plaintiff's right to recover such fines or penalties that accrued two years before the institution of this suit, and this the defendant is ready to verify.

6. Further specially answering said petition, this defendant says that the State of Texas ought not to recover judgment against this defendant cancelling its permit to do business in the State of Texas because of any act or thing done or committed by this defendant prior to the 22nd day of September, 1804, by reason of its alleged violation of the Anti-Trust Act of May 25, 1899, in that the plaintiff's cause of action, if any it ever had, for the cancellation of said permit to do business in the State of Texas accrued more than two years before the filing of this suit, and is therefore barred by the

Statute of Limitation of two years prescribed in Article 3354, Revised Civil Statutes of the State of Texas, which this de-
133 fendant here specially pleads in bar of the plaintiff's right to cancel said permit to do business in the State of Texas by reason of any act or thing occurring two years before the institution of this suit, and this the defendant is ready to verify.

7. Further specially answering said petition, this defendant says that plaintiff ought not to recover judgment herein against this defendant, either for fines or penalties, or the cancellation of its permit to do business in the State of Texas, under the Anti-trust act of May 25, 1899, for the reason that if the Statute of Limitation of two years, as prescribed in Article 3354, Revised Civil Statutes of Texas, the benefit of which this defendant invokes in Paragraphs 5 and 6 of this answer is not available to this defendant, and if no period of limitation bars suits to recover fines or penalties, or suits to forfeit permits under said anti-trust act of May 25, 1899, this defendant, if plaintiff's cause of action is of a civil nature, will be denied the equal protection of the laws, and said anti-trust act of May 25, 1899, is void as a whole, in violation of that part of Section 1 of the 14th Amendment of the Constitution of the United States which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws, since, if plaintiff's cause of action is of a civil nature, the only class of actions of a civil nature for the recovery of a personal judgment, except those governed by Articles 3353, 3356 and 3358, Revised Civil Statutes of Texas in which the benefit of said Article 3354, Revised Civil Stat-es of Texas, is denied to a defendant, is that class arising under the said Anti-trust act of May 25, 1899, and this the defendant is ready to verify.

8. Further specially answering said petition, this defendant says that the State of Texas ought not to recover any fines or penalties herein against this defendant because of any act or thing done
137 or committed by this defendant prior to the 22nd day of September, 1902, by reason of its alleged violation of the Anti-Trust Act of May 25, 1899, in that the plaintiff's cause of action, if any it ever had, for the recovery of such fines or penalties accrued more than four years before the filing of this suit and is therefore barred by the Statute of *Mi*nitation of four years prescribed in Article 3358, Revised Civil Statutes of Texas, which this defendant here specially pleads in bar of the plaintiff's right to recover such fines or penalties that accrued four years before the institution of this suit, and this the defendant is ready to verify.

9. Further specially answering said petition, this defendant says that the State of Texas ought not to recover judgment against this defendant cancelling its permit to do business in the State of Texas, because of any act or thing done or committed by this defendant prior to the 22nd day of September, 1902, by reason of its alleged violation of the Anti-Trust Act of May 25, 1899, in that the plaintiff's cause of action, if any it ever had, for the cancellation of said permit to do business in the State of Texas accrued more than four years before the filing of this suit and is therefore barred by the Statute of Limitation of four years prescribed in Article 4458, Revised Civil Statutes of Texas, which this defendant here specially pleads in bar

of the plaintiff's right to cancel said permit to do business in the State of Texas by reason of any act or thing occurring two years before the institution of this suit, and this defendant is ready to verify.

10. Further specially answering said petition, this defendant says that plaintiff ought not to recover judgment herein against this defendant, either for fines or penalties, or the cancellation of its permit to do business in the State of Texas under the Anti-Trust
138 Act of May 25, 1899, for the reason that if the Statute of Limitation of four years, as prescribed in Article 3358, Revised Civil Statutes of Texas, the benefit of which this defendant invokes in paragraphs 8 and 9 of this answer, is not available to this defendant, and if no period of limitation bars suits to recover fines or penalties, or suits to forfeit permits, under said Act of May 25, 1899, this defendant, if plaintiff's cause of action is of a civil nature, will be denied the equal protection of the laws, and said Anti-Trust Act of May 25, 1899, is void as a whole, in violation of that part of Section 1 of the 14th Amendment to the Constitution of the United States, which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws, since, if plaintiff's cause of action is of a civil nature, the only class of actions of a civil nature for the recovery of a personal judgment, except those governed by Article- 3353, 3354, and 3356, Revised Civil Statutes of Texas, in which the benefit of said Article 3358, Revised Civil Statutes of Texas, is denied to a defendant, is that class arising under said Anti-Trust Act of May 25, 1899, and this the defendant is ready to verify.

11. Further specially answering said petition, this defendant says that the State of Texas ought not to recover any fines or penalties herein against this defendant because of any act or thing done or committed by this defendant prior to the 22nd day of September, 1904, by reason of its alleged violation of the Anti-Trust Act of March 31, 1903, in that the plaintiff's cause of action, if any it ever had, for the recovery of such fines or penalties accrued more than two years before the filing of this suit and is therefore barred by the Statute of Limitation of two years prescribed in Article 219 of the Code of Criminal Procedure of the State of Texas, which
139 this defendant specially pleads in bar of the plaintiff's rights to recover such fines or penalties that accrued more than two years before the institution of this suit, and this the defendant is ready to verify.

12. Further specially answering said petition, this defendant says that the State of Texas ought not to recover judgment against this defendant cancelling its permit to do business in the State of Texas because of any act or thing done or committed by this defendant prior to the 22nd day of September, 1904, by reason of its alleged violation of the Anti-Trust Act of March 31, 1903, in that the plaintiff's cause of action, if any it ever had, for the cancellation of such permit to do business in the State of Texas, accrued more than two years before the filing of this suit and is therefore barred by the Statute of Limitation of two years prescribed in Article 219 of the Code of Criminal Procedure of the State of Texas, which this defendant here specially pleads in bar of the plaintiff's right to cancel

said permit to do business in the State of Texas by reason of any act or thing occurring two years before the institution of this suit, and this the defendant is ready to verify.

13. Further specially answering said petition, this defendant says that plaintiff ought not to recover judgment herein against this defendant, either for fines or penalties, or the cancellation of its permit to do business in the State of Texas, under the Anti-Trust Act of March 31, 1903, for the reason that if the Statute of Limitation of two years, as prescribed in Article 219 of the Code of Criminal Procedure of the State of Texas, the benefit of which this defendant invokes in Paragraphs 11 and 12 of this answer, is not available to this defendant, this defendant will be denied the equal protection of the laws, and said Anti-Trust Act of March 31, 1903, is
140 void as a whole, in violation of that part of Section 1 of the 14th Amendment to the Constitution of the United States which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws, since, if a natural person charged with the violation of said Anti-Trust Act of March 31, 1903, should be prosecuted by proceedings, criminal in form, for violating the said Anti-Trust Act of March 31, 1903, or any of its provisions, which would be a proper form of proceeding, the prosecution against him would be barred by said Article 219 of the Code of Criminal Procedure, and this the defendant is ready to verify.

14. Further specially answering said petition, this defendant says that plaintiff ought not to recover judgment herein against this defendant, either for fines or penalties, or the cancellation of its permit to do business in the State of Texas, under the Anti-Trust Act of March 31, 1903, for the reason that if the Statute of Limitation of two years, as prescribed in Article 219 of the Code of Criminal Procedure of the State of Texas, the benefit of which this defendant invokes in paragraphs 11 and 12 of this answer, is not available to this defendant, and if no period of limitation bars suits to recover fines or penalties, or suits to forfeit permits, under the said Act of March 31, 1903, this defendant will be denied the equal protection of the laws, and said Anti-Trust Act of March 31, 1903, is void as a whole, in violation of that part of Section 1 of the 14th Amendment to the Constitution of the United States which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws, since every cause of action or offense below the grade of felony, arising from the violation of every other penal or criminal statute of this State would be barred by said Article 219 of the Code of Criminal Procedure of Texas as to all natural persons and corpo-
141 rations, and this the defendant is ready to verify.

15. Further specially answering said petition, this defendant says that the State of Texas ought not to recover any fines or penalties herein against this defendant because of any act or thing done or committed by this defendant prior to the 22nd day of September, 1904, by reason of its alleged violation of the Anti-Trust Act of March 31, 1903, in that the plaintiff's cause of action, if any it ever had, for the recovery of such fines or penalties accrued more than two years before the filing of this suit and is therefore barred by the Statute of Limitation of two years prescribed in Article 3354,

Revised Civil Statutes of Texas, which this defendant here specially pleads in bar of the plaintiff's right to recover such fines or penalties that accrued two years before the institution of this suit, and this the defendant is ready to verify.

16. Further specially answering said petition, this defendant says that the State of Texas ought not to recover judgment against this defendant cancelling its permit to do business in the State of Texas because of any act or thing done or committed by this defendant prior to the 22nd day of September, 1904, by reason of its alleged violation of the Anti-Trust Act of March 31, 1903, in that the plaintiff's cause of action, if any it ever had, for the cancellation of said permit to do business in the State of Texas accrued more than two years before the filing of this suit and is therefore barred by the Statute of Limitation of two years prescribed in Article 3354, Revised Civil Statutes of the State of Texas, which this defendant here specially pleads in bar of the plaintiff's right to cancel said permit to do business in the State of Texas by reason of any act or thing occurring two years before the institution of this suit, and
142 this the defendant is ready to verify.

17. Further specially answering said petition, this defendant says that the plaintiff ought not to recover judgment herein against this defendant, either for fines or penalties, or the cancellation of its permit to do business in the State of Texas, under the Anti-Trust act of March 31, 1903, for the reason that if the Statute of Limitation of two years, as prescribed in Article 3354, Revised Civil Statutes of Texas, the benefit of which this defendant invokes in Paragraphs 15 and 16 of this answer, is not available to this defendant, and if no period of limitation bars suits to recover fines or penalties, or suits to forfeit permits, under said Anti-Trust Act of March 31, 1903, this defendant, if plaintiff's cause of action is of a civil nature, will be denied the equal protection of the laws, and said Anti-Trust Act of March 31, 1903, is void as a whole, in violation of that part of Section 1 of the 14th Amendment to the Constitution of the United States which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws, since, if plaintiff's cause of action is of a civil nature, the only class of actions of a civil nature for the recovery of a personal judgment, except those governed by Article 3353, 3356, and 3358, Revised Civil Statutes of Texas, in which the benefit of said Article 3354, Revised Civil Statutes of Texas is denied to a defendant, is that class arising under the said Anti-Trust Act of March 31, 1903, and this the defendant is ready to verify.

18. Further specially answering said petition, this defendant says that the State of Texas ought not to recover any fines or penalties against this defendant because of any act or thing done or
143 committed by this defendant prior to the 22nd day of September, 1903, by reason of its alleged violation of the Anti-Trust Act of March 31, 1903, in that the plaintiff's cause of action, if any it ever had, for the recovery of such fines or penalties accrued more than three years before the filing of this suit and is therefore barred by the Statute of Limitation of three years prescribed in Article 218 of the

Code of Criminal Procedure of the State of Texas, which this defendant here specially pleads in bar of the plaintiff's right to recover such fines or penalties that accrued three years before the institution of this suit, and this the defendant is ready to verify.

19. Further specially answering said petition, this defendant says that the State of Texas ought not to recover judgment herein against this defendant cancelling its permit to do business in the State of Texas because of any act or thing done or committed by this defendant prior to the 22nd day of September, 1903, by reason of its alleged violation of the Anti-trust Act of March 31, 1903, in that the plaintiff's cause of action, if any it ever had, for the cancellation of said permit to do business in the State of Texas accrued more than three years before the filing of this suit and is therefore barred by the Statute of Limitation of three years prescribed in Article 218 of the Code of Criminal Procedure of the State of Texas which this defendant here specially pleads in bar of the plaintiff's right to cancel said permit to do business in the State of Texas by reason of any act or thing occurring three years before the institution of this suit, and this the defendant is ready to verify.

20. Further specially answering said petition, this defendant says that plaintiffs ought not to recover judgment herein against this defendant, either for fines or penalties, or the cancellation of its permit to do business in the State of Texas, under the Anti-Trust
144 Act of March 31, 1903, for the reason that if the Statute of Limitation of three years, as prescribed in Article 218 of the Code of Criminal Procedure of the State of Texas, the benefit of which this defendant invokes in Paragraphs 18 and 19 of this answer, is not available to this defendant, this defendant will be denied the equal protection of the laws, and the said Anti-Trust Act of March 31, 1903, is void as a whole, in violation of that part of Section 1 of the 14th Amendment to the Constitution of the United States which provides that no state shall deny to any person within its jurisdiction the equal protection of the laws, since, if a natural person charged with the violation of said Anti-Trust Act of March 31, 1903, should be prosecuted for a felony for violating said act as is authorized by Section 13 thereof, the prosecution against him would be barred in three years by said Article 218, and this the defendant is ready to verify.

21. And further specially answering herein, and for the purpose of supplementing its foregoing special pleas of limitation, Nos. 1 to 20, inclusive, and each of them, defendant says that though it is a foreign corporation, it has at all times since the 31st day of May A. D. 1900, maintained offices and local agents in this state, and particularly has at all times since said date maintained an office and local agent at Austin, Travis County, Texas, upon whom service of citation could have been had by plaintiff as to any of the various alleged causes of action set up in plaintiff's petition, at any time since said May 31st, 1900, and this the defendant stands ready to verify.

22. For further special answer herein this defendant says that the plaintiff herein, in so far as it seeks to question or review the action by which the Waters Pierce Oil Company, chartered May 7th, 1878,

was dissolved, is barred and precluded by the judgment ren-
145 dered on the 5th day of November, A. D. 1900, in the District Court of McLennan County, State of Texas, in a suit duly instituted in said Court on April 1st, 1895, and therein pending on said 5th day of November, A. D. 1900, wherein the plaintiff herein, the State of Texas, was plaintiff and wherein said old Waters Pierce Oil Company, so chartered on May 7th, 1878, was defendant, and wherein said State, by its proper petition and information filed in said Court against said defendant sought to recover against it a large sum of money, greatly in excess of Five Hundred Dollars and within the jurisdiction of said District Court, as penalties or fines, for acts done and committed by said defendant in violation of what is known as the "Anti-Trust Laws," of the State of Texas, being the acts of the Legislature of the State of Texas, approved March 30th, 1889, and in which suit at the trial after said act of dissolution had occurred, the issue was duly and legally presented to said District Court, that because of said dissolution, the said old Waters Pierce Oil Company was no longer in existence, and at said trial and at a hearing therein upon the merits by said Court after taking evidence as to the manner in which said Company had been dissolved, it was thereupon and by said Court duly adjudged and determined that said Waters Pierce Oil Company so chartered on May 7th, 1878, had been duly and legally dissolved, and judgment was in said suit duly entered of record so adjudicating and determining and because of said dissolution said District Court thereupon and in said cause duly adjudged that said suit should abate and be dismissed, and it thereupon entered its judgment so adjudicating and determining, and this defendant attached hereto a copy of said judgment and makes the same part of this plea, marked Exhibit A, and prays that the same be taken and considered as part hereof.

146 This defendant says that the plaintiff herein duly prosecuted an appeal from said judgment to the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas, and caused a transcript of the record in said cause to be duly filed in said appellate court in the manner and within the time required by law and that said appellate court by its proper judgment rendered of record on the 2nd day of April A. D. 1902, in said cause affirmed the said judgment of the District Court of McLennan County, and thereby caused the same to become final and conclusive in all respects, and this defendant here pleads and alleges that the said judgment of the District Court of McLennan County rendered in said cause against the plaintiff herein is now in full force and effect and has not been in any manner qualified, reversed or set aside and that by reason of said judgment so fixing the status of said old Waters Pierce Oil Company and adjudging that it had been theretofore dissolved and did not then have any legal existence, the State of Texas, the plaintiff herein, is barred and precluded from further denying or questioning the validity of the dissolution of said former Waters Pierce Oil Company, so chartered on the 7th day of May, A. D. 1878, and this defendant further avers that the said District Court of McLennan County, Texas, was a court of competent jurisdiction

and had full power to hear and determine the said suit and render the judgment therein which it did render as above set forth, and defendant here pleads its said judgment as *res adjudicata* finally settling as against the State of Texas, the fact that said old Waters Pierce Oil Company was dissolved in accordance with law, and this the defendant is ready to verify.

23. For further special answer herein, this defendant says that if it has incurred any penalty, or is liable to any fine, to the
147 State of Texas by reason of anything done or committed, or permitted or suffered to be done or committed, prior to the 31st day of March, A. D. 1903, which is not admitted but expressly denied, then it is not liable to the State of Texas in the penalties as prescribed in the Act of the Legislature of May 25, A. D. 1899, as claimed by the State in its petition or information herein filed, but is liable, if at all, to the penalties prescribed in said Act of March 31, 1903, under the provisions of Article Fifteen of the Penal Code of the State of Texas and under the general rules of law which prescribes that in cases where by subsequest law the penalty for the same offense is ameliorated, the offender shall upon conviction receive the punishment prescribed in the later law, and while this defendant denies that it is liable to the State of Texas in any sum as a fine or penalty for anything occurring prior to March 31st, 1903, or after that time, it here specially pleads its election to claim the benefit of the provisions of said later act, approved March 31, 1903, reducing the amount of penalties recoverable by the State for an infraction of said statute, and avers that both acts are upon the same subject, and if valid, undertake and seek to define the same offense and to impose punishment for the same kind of offense and for the same kind of acts and conduct on the part of persons and classes of persons therein specified, and this defendant further avers that unless the lower grade of punishment prescribed in said Act of March 31, 1903, is imposed and held applicable to said former Act of May 25, 1899, and as an amendment thereto, and this defendant shall be held liable under said former statute and to the punishment therein prescribed, that such holding will deprive this defendant of its property without due process of law, and will deny to it the equal protection of the law, in violation of the Constitution
of the United States, and particularly of Section 1 of the
148 Fourteenth Amendment thereof, and this the defendant is ready to verify.

24. For further special answer herein, this defendant says that if this defendant ever created, entered into and became a member of and a party to any pool, trust, agreement, combination, confederation, conspiracy, or understanding with another and other corporations, and with individuals and persons, or ever became a monopoly and was a party to a union, combination, consolidation and affiliation of capital, credit, property, assets, skill and acts by and between persons and corporations, and ever affiliated, amalgamated and consolidated with other persons and corporations for the purposes, or any of the purposes, denounced as illegal by said Anti-Trust Act of May 25, 1899, as alleged in plaintiff's petition, which is not admitted, but denied, and if this defendant ever became a party to a trust and to

a combination of capital, skill and acts by and between itself and other corporations and persons, and entered into a combination and consolidation and combined and united its interests with other corporations and persons for the purposes, or any of the purposes, denounced as illegal by the Anti-Trust Act of March 31, 1903, as alleged in plaintiff's petition, which is not admitted, but denied, this defendant avers that all such pools, trusts, agreements, combinations, confederations, conspiracies, understandings, unions, consolidations, affiliations and amalgamations, if made, which is not admitted, but denied, were made outside of the State of Texas and with reference to commerce in oils and the products of petroleum between states other than the State of Texas, and if the same contemplated or have affected such commodities in Texas in any respect, it has been in respect to commerce therein between the State of Texas and some other state, and defendant here specially pleads and avers that the laws of Texas relied upon as the basis of recovery herein, to-
149 wit, the Anti-Trust Act of May 25, 1899, and the Anti-Trust Act of March 31, 1903, have no application thereto, and that this Court is without jurisdiction of the subject matter of all such alleged pools, trusts, agreements, combinations, confederations, conspiracies, understandings, unions, affiliations and amalgamations, which, if made at all, were made outside of the State of Texas, for the reason that the laws of Texas have no extra territorial operation and effect; and this defendant avers that if said Acts of May 25, 1899, and March 31, 1903, or either of them apply to said pools, trusts, agreements, combinations, confederations, understandings, unions, consolidations, conspiracies, affiliations and amalgamations alleged in said petition, the same are in violation of Subdivision 3 of Section 8 of Article 1 of the Constitution of the United States, conferring upon Congress the power to regulate commerce among the several states, and this the defendant is ready to verify.

25. For further answer herein, this defendant says it is a corporation duly chartered in the State of Missouri and under the laws of that State and under its charter has power to transact business in said State of Missouri, and in other States, including the State of Texas, and is and has at all times since its incorporation on the 29th day of May, A. D. 1900, been engaged in conducting an interstate business, and that being so incorporated under the laws of the State of Missouri, full faith and credit attached to the Act of Missouri in granting its charter to it, under the provisions of Section 1 of Article Four of the Constitution of the United States, which will be violated if the validity of said charter is not recognized by the courts of Texas in this case, and defendant says that it is not within the constitutional powers of the State of Texas to make it an offense against its laws by reason of ownership of stock in defendant corporation by
150 persons or corporations prohibited by the laws of Texas, and that to so construe the Acts of the Legislature of the State of Texas upon which the State relies as basis of recovery herein, will deprive this defendant of its property without due process of law and deny to it the equal protection of the laws, contrary to the provisions of the Constitution of the United States and particularly

of Section 1 of the Fourteenth Amendment thereof, and this the defendant is ready to verify.

26. For further special answer herein this defendant says that the subject of who shall be qualified to subscribe for, or after issuance to purchase and own stock in defendant corporation under its charter as a corporation created and duly incorporated under the laws of the State of Missouri, is a matter subject to the exclusive jurisdiction of the State of Missouri, and if it be a fact that the Standard Oil Company of New Jersey became at any time or is now the owner of stock of this defendant, which is not admitted, then this defendant avers that when such stock was so acquired it was under a contract valid in the State of Missouri, where it was made and where this defendant had its principal office and where said stock had its situs, and that it is not competent or within the constitutional powers of the State of Texas, by its laws, to make it an offense for said Standard Oil Company to so own stock in this defendant corporation, and that if either of the Acts of the Legislature of the State of Texas, to-wit, the Anti-Trust Act of May 25, 1899, and the Anti-Trust Act of March 31, 1903, relied upon by the State as basis of recovery in this suit are held to give the State the right to recover penalties against this defendant because of such holding of stock by said Standard Oil Company, then each of said Acts is unconstitutional, null and void because in violation of paragraph one of section ten of Article One of the Constitution of the United States which declares that
151 no state shall pass any law impairing the obligations of a contract and are further violative of section one of the 14th Amendment to the Constitution of the United States, in that said Acts would deprive this defendant of its property without due process of law and deny to this defendant the equal protection of the law, and this the defendant is ready to verify.

27. For further answer herein this defendant says that if it shall be held that the Waters Pierce Oil Company, chartered May 7th, 1878, was not legally dissolved and that this defendant is in legal effect the same corporation and required to answer for the doings of said old company, which is not admitted, but expressly denied, then this defendant says that said former corporation was also created under the laws of the State of Missouri and received its charter from said State long prior to the passage of each of the acts of the Legislature of the State of Texas upon which said State relies as basis of recovery herein, and that the ownership of stock in said company by the Standard Oil Company as alleged in plaintiff's petition, was based upon the acquisition of such stock by said Company upon contracts ante-dating the passage of either of said Acts of the Texas Legislature of May 25, 1899, and March 31, 1903, which contracts under which said stock was held, were valid when made and where said stock had its situs, and that both of said Acts of the Legislature of the State of Texas in so far as the same can be held as making this defendant liable to penalties in this suit for said reason, are violative of the Constitution of the United States and of the particular provisions set out in the preceding special answer and of the further provision in said paragraph one of Section Ten of Article 1 which forbids any state to pass *ex post facto* law, and while denying its liability

for anything connected with said former Waters Pierce Oil
152 Company, this defendant, if held thereto, here pleads the invalidity of both of said Acts of the Legislature of the State of Texas relied on as the basis of recovery herein because of their contravention of the Constitution of the United States in the particulars herein set forth, and this the defendant is ready to verify.

28. For further special answer herein, defendant says that if it be true that the Standard Oil Company of New Jersey, held, owned or controlled any of its stock on March 31, 1903, which it not admitted, but expressly denied, and it be further held that the Act of the Legislature of the State of Texas approved on that day, and which is relied upon by the State as basis of recovery herein, can have legal application to such holding and render this defendant liable to penalties by reason thereof, then this defendant says that said Act is unconstitutional, null and void and cannot be held to include or in any manner affect such holding of stock in this defendant by said Standard Oil Company on or prior to that day, or the continued holding thereof after that date, because if said stock was so held, it was under contracts made prior thereto which were valid when made and with respect to said stock the said Standard Oil Company owned the same under valid contracts and under vested rights, and to attempt to hold this defendant liable to penalties because of such holding of its stock, would deprive defendant of its property without due process of law and deny to it the equal protection of the law in violation of the Constitution of the United States, and particularly of Section 1 of the Fourteenth Amendment thereof, and would impair the obligations of the contract under which said stock was so acquired and held, and would likewise render this defendant, liable because of something occurring prior to the passage of said Act, in violation of paragraph one of Section 10 of Article One of the Constitution of the United States, and this the defendant is ready to verify.

153 29. For further special answer herein, defendants says that the Act of the Legislature of the State of Texas, approved May 25, 1899, and which is relied upon as the sum of recovery against this defendant of penalties in the sum of Five Thousand Dollars for each and every day from the 31st day of May, A. D. 1900, to the 31st day of March A. D. 1903, was and is unconstitutional, null and void, because of its terms and in the construction of its language as applied to the facts alleged in plaintiff's petition, it is so vague, indefinite and uncertain of meaning, that it was and is impossible for defendant in advance of its construction and application to any state of facts by the verdict of a jury and the ruling of the court, to understand its meaning and legal effect, or to know what was lawful and permissible to be done and what was unlawful — prohibited, and therefore said Act is in violation of the Constitution of the United States in that it would, if defendant is convicted of violating it, deprive defendant of its property without due process of law and deny to it the equal protection of the law in contravention of Sec-

tion 1 of the 14th Amendment to the Constitution of the United States. And this the defendant is ready to verify.

30. For further special answer herein, defendant says that the said Act of the Legislature of the State of Texas, approved May 25, 1899, was and is unconstitutional, null and void, and violative of the Constitution of the United States, and particularly of said Section 1 of the 14th Amendment thereof, because at the same session of said Legislature by another Act, approved May 27, 1899, it was provided that it should be lawful for any and all persons engaged in any kind of work of labor, manual, mental, or both, to associate themselves together and form trade unions and other organizations for the purpose of protecting themselves in their personal work, personal
154 labor and personal service in their respective employments, which said last enactment this defendant avers was in legal effect an amendment of said Act of May 25, 1899, and entitled the persons and classes of persons therein designated to form pools, trusts and combinations and thereby created and caused such persons so designated in said later Act an exempt class not bound by the terms of said first Act under which the State seeks to punish defendant in this case, and defendant therefore says because of said exemptions and discriminations, the said Act of the Legislature approved May 25, 1899, if otherwise valid, became null and void and that to hold this defendant amenable to its provisions and subject it to the penalties therein denounced and herein sought to be recovered, would deprive it of its property without due process of law and deny to it the equal protection of the law in violation of Section 1 of the 14th Amendment to the Constitution of the United States, and this the defendant is ready to verify.

31. For further special answer herein, defendant says that said Act of the Legislature of the State of Texas, approved May 25, 1899, was and is unconstitutional, null and void because by its terms it was enacted as cumulative of and in continuation of the prior Act of the Legislature of the State of Texas, upon the same subject, approved April 30, 1895, in which said former act it was expressly provided that the terms of said Act should not apply to live stock and agricultural products, in the hands of the producer or raiser, nor to be held or construed to prevent the organization of laborers for the purpose of maintaining any standard of wages, and defendant therefore says by reason of said exemptions and discriminations so made in said Act of April 30, 1895, and continued in force by said Act of May 25, 1899, said last mentioned Act was unconstitutional, null and void and the State of Texas cannot recover penalties
155 against defendant herein, because to so hold and subject this defendant to penalties by reason of said Act, would result in the taking of this defendant's property without due process of law and deny to it the equal protection of the law in violation of Section 1 of the 14th Amendment to the Constitution of the United States, and this the defendant is ready to verify.

32. For further special answer herein, defendant says that the Act of the Legislature of the State of Texas, approved March 31, 1903, and which is relied upon as the basis of recovery against this defend-

ant, of penalties in the sum of Fifty Dollars for each and every day from the 31st day of March, A. D. 1903, up to the filing of this suit, was and is unconstitutional, null and void, because by its terms and in the construction of its language as applied to the facts alleged in plaintiff's petition it is so vague, indefinite and uncertain of meaning that it was and is impossible for defendant, in advance of its construction and application to any state of facts by the verdict of a jury and the ruling of a court, to understand its meaning and legal effect, or to know what was lawful and permissible to be done, and what was unlawful and prohibited, and therefore said Act is in violation of the Constitution of the United States, in that it would, if defendant is convicted of violating it, deprive defendant of its property without due process of law, and deny to it the equal protection of the law in violation of Section 1 of the 14th Amendment to the Constitution of the United States, and this the defendant is ready to verify.

33. For further special answer herein, this defendant says that the said Act of the Legislature of the State of Texas, approved March 31, 1903, was and is unconstitutional, null and void and violative of the Constitution of the United States, and particularly of said Section 1 of said 14th Amendment thereof, because by the terms
156 of said Act all other laws theretofore passed by the Legislature of the State of Texas, upon the same subject were particularly and specifically repealed, except the Act of the Legislature of the State of Texas, approved May 27, 1899, in which said last mentioned Act it was provided that it should be lawful for any and all persons engaged in any kind of work or labor, manual, mental, or both, to associate themselves together and form trades unions and other organizations for the purpose of protecting themselves in their personal work, personal labor and personal service in their respective employments. Defendant here avers that said Act, approved May 27, 1899, was not repealed by said Act of March 31, 1903, and was not intended by the Legislature passing the same, or by the Governor, approving the same, to be so repealed.

34. For further answer herein this defendant says with respect to said Act approved May 27, 1899, that continuously since the passage of said Act approved March 31, 1903, it has been uniformly held and construed by the governor of the State of Texas charged with the enforcement of the laws, and by the Attorney General of said State, charged particularly in said Act of March 31, 1903, with the enforcement thereof, that said Act of May 27, 1899, was not repealed or in any manner affected by said Act of March 31, 1903, and that it was lawful for the persons and classes of persons mentioned in said Act to form pools, trusts, combinations and associations for the purpose of protecting themselves in their personal work, personal labor and personal service, by which contemporaneous and continuous construction it has been held lawful for all classes of persons in the State of Texas, engaged in any kind of employment wherein they perform labor, manual, mental, or both, to form associations and to unite and agree among themselves upon a standard

of wages for their personal service and to fix a standard of
157 price for the sale of their commodities, wherefore, defendant says that such contemporaneous, uniform and continuous construction of said Act, approved March 31, 1903, must be taken and held as conclusive upon the State of Texas as the true construction and meaning of said Act.

Defendant therefore says that the said Act approved May 27, 1899, is in full force and effect in the State of Texas, and that by its terms and meaning, as above construed and held, it creates an exemption of a large class of persons in the State of Texas, in fact, as defendant here avers, constitutes the great majority of the people of the State of Texas into a class exempt from the provisions of said Act of March 31, 1903 and that by reason thereof said Act of March 31, 1903, is violative of the Constitution of the United States, and particularly of Section 1 of the 14th Amendment thereof, and that to hold defendant liable for the penalties denounced in said Act would deprive it of its property without due process of law, and deny to it the equal protection of the law, and this the defendant is ready to verify.

35. For further special plea, defendant says that the State of Texas ought not to recover against it in this cause because of anything done in alleged violation of either the act approved May 25, 1899, or the act approved March 31, 1903, because of the attempt in each of said Acts to make the penalty for the violation thereof cumulative with a separate penalty for each and every violation thereof on each and every day, because the enforcement of these statutes against this defendant for the things charged in plaintiff's petition would be confiscatory and would result in the infliction of unusual and excessive punishment for the violation of statutes of doubtful meaning, the validity, import and scope of which had not been the subject of judicial construction, and could not be as-
158 certained by this defendant or any other person without being subjected to the practical confiscation of its property, while the meaning and scope of such statutes is being judicially ascertained, and defendant therefore says that to uphold said Acts and subject it to penalties as claimed by the State in this cause will result in the infliction upon it of unusual and excessive fines and penalties in violation of Section 13 of Article 1 of the Constitution of the State of Texas, and deprive it of its property without due process of law, and deny to it the equal protection of the law, in violation of the Constitution of the United States, and particularly of Section 1 of the 14th Amendment thereof, and this the defendant is ready to verify.

36. For further special answer herein defendant says that it is true as alleged in plaintiff's petition that on the 31st day of May, A. D. 1900, the State of Texas, acting by its Secretary of State who had full authority so to do, issued and granted to defendant a permit to transact its business in said State of Texas for the period of ten years from that date, which said permit was then and there so issued in consideration of the sum of One Hundred and Eighty Dollars then paid to the State of Texas by this defendant, the same being the amount of the fees and the amount of the franchise tax

properly chargeable against defendant under the laws of said State and due to be paid at the time of the issuance of said permit.

Defendant avers that under and by virtue of the laws of the State of Texas in force at the time that it paid its money to said State as the consideration for said permit, it was provided that defendant should be entitled to conduct its business within the State of Texas for the period of ten years from that date, that is to say, until the 30th day of May, A. D. 1910, the only condition attached and forming part of said permit was that defendant should annually
159 thereafter pay the sum fixed by the laws of said State as an annual franchise tax, and defendant here avers that it has so paid annually and within the time allowed by the laws of the State of Texas for payment, the full sum charged and fixed in said laws as the annual franchise tax due by this defendant upon its said permit. Defendant therefore pleads that by the issuance of said permit and in consideration of the sum then paid to it by this defendant, as above set out, and since paid to it by this defendant as an annual franchise tax, as above alleged, the State of Texas entered into a valid contract with this defendant entitling defendant to conduct its said business within said State of Texas for a period of ten years and until the 30th day of May, A. D. 1910, which said contract is now in full force and effect and obligatory upon the part of the State according to its terms, as herein pleaded.

Defendant further avers that the Act of the Legislature of the State of Texas, approved March 31, 1903, and relied upon by the State as a basis of recovery against this defendant in this cause was passed after the State of Texas entered into said contract and issued its said permit to defendant, and that said act was and is unconstitutional, null and void in all respects wherein it undertakes to limit or restrict the holding and ownership of stock in this defendant, and wherein it undertakes to make the existence and performance of contracts theretofore legal a violation of its terms, and defendant says that the said act has no force as a law in so far as it may be held as affording to the State grounds for the cancellation of its said contract with this defendant, as evidenced by its said permit so issued to defendant, and to allow the State of Texas to cancel said permit upon the grounds or any of the grounds alleged in plaintiff's petition and arising under said Anti-Trust Act of March 31, 1903,
would violate the obligation of the contract between the State
160 of Texas and this defendant created by said permit in contravention of paragraph 1, Section 10 of Article 1 of the Constitution of the United States, and this the defendant is ready to verify.

37. Further specially answering herein, this defendant says that if it be true, as alleged in plaintiff's petition, that the statutes of the State of Missouri by Sections 977, 978, 979, 980 and 981 provide for the dissolution of corporations as therein prescribed, the method therein prescribed is not applicable to the dissolution of a private trading corporation by the unanimous consent of all the stockholders, or if applicable, it is not exclusive of the common law method of dissolving a private trading corporation by the unanimous consent of all the stockholders; that in the State of Missouri on the 28th day

of May, 1900, the common law prevailed and was the rule of action and decision when not repugnant to or inconsistent with the Constitution of the United States, the Constitution of the State of Missouri, or the statute law in force in that state for the time being, by virtue of the adoption of the common law by the State of Missouri by Section 4151 of the Revised Statutes of Missouri of 1899, the same being a reproduction and continuation of Section 6161a of the Revised Statutes of Missouri of 1889; that there was nothing on said 28th day of May, 1900, in the Constitution of the United States, the Constitution of the State of Missouri, or the Statute laws of Missouri, then in force, to which the common law rule permitting the dissolution of private trading corporations by the unanimous consent of all the stockholders was repugnant or with which it was inconsistent, but that on the contrary, by Section 1018 of the Revised Statutes of Missouri, in force on said 28th day of May, 1900, there was a distinct recognition and adoption of the common law rule on the subject by prescribing that the president or secretary of every incorporated company in that State, when it shall dis-
161 solve, is required to file with the Secretary of State an affidavit to that effect, and by prescribing certain consequences for the failure to comply with the provisions of said section; that on said 28th day of May, 1900, the Waters-Pierce Oil Co., created and organized on May 7th, 1878, under the laws of the State of Missouri, was a private trading domestic corporation *corporation* of the State of Missouri, and on that day all of its stockholders, by unanimous vote, determined to dissolve and did dissolve that corporation; that on the 29th day of May, 1900, Andrew M. Finlay, who, until said dissolution, was the president of said Waters Pierce Oil Company of May 7, 1878, filed an affidavit, in compliance with Section 1018 showing in due form the dissolution of said Waters Pierce Oil Company of May 7, 1878, pursuant to the action of all of its stockholders taken on said 28th day of May, 1900, with the Secretary of State of the State of Missouri, and that said affidavit was then and there accepted by that officer, who, by the laws of Missouri, was authorized in the exercise of discretion vested in him to accept said affidavit, and that thereby such dissolution was accepted and ratified by the State of Missouri, as a valid dissolution of said Waters Pierce Oil Company of May 7, 1878; that under the common law rule in force in Missouri such acceptance was not necessary when the dissolution was accomplished by the unanimous vote of all the stockholders, but if defendant is mistaken and such acceptance was necessary, the State of Missouri did accept such dissolution as aforesaid; that having accepted said dissolution of the Waters Pierce Oil Company of May 7, 1878, the State of Missouri, by and through its Secretary of State vested with discretion in respect thereto, issued to this defendant a proper certificate of incorporation under the great seal of that state, showing the incorporation of this defendant by virtue of its
162 charter filed with the Secretary of State of the State of Missouri on May 29, 1900; that the name of this defendant being the same as that of the Waters Pierce Oil Co. of May 7, 1878, the Secretary of State of the State of Missouri was prohibited, by Section 959 of the Revised Statutes of Missouri, from issuing to it a

certificate of incorporation under the same name and style as that already assumed by the Waters Pierce Oil Co. of May 7, 1878, it is was still an existing corporation, and that the Secretary of State of the State of Missouri was clothed with the discretion to determine whether the proposed new corporation was within the prohibition of said Section 959, and he decided that it was not.

That on said 28th day of May, 1900, there existed another statute of the State of Missouri whereby the common law mode of dissolving a private trading corporation by the unanimous consent of its stockholders was recognized and adopted, to-wit: Section 976 of the Revised Statutes of Missouri of 1899 which was a reproduction and continuation in force of Section 2513g of the Revised Statutes of Missouri of 1889, whereby it was provided that upon the dissolution of a corporation its president and directors or managers of its affairs should be trustees with power to settle its affairs, collect its outstanding debts and divide its moneys and other property among its stockholders after paying its debts, and as such trustees they were authorized to sue and be sued; that said Article 976 of the Revised Statutes of Missouri of 1899 existed for ten years before the revision of 1899 as Section 2513g of the Revised Statutes of Missouri of 1889 and for ten years before the incorporation in said Revised Statutes of Missouri of 1899 of Sections 977, 978, 979, 980, and 981, relied upon in plaintiff's petition and existed when the only method of dissolving a corporation in Missouri was the common law
163 mode, and that said Section 976 applied prior to the enactment of said Sections 977, 978, 979, 980 and 981 to the dissolutions accomplished under the common law said Section 1018, and since the enactment of said Sections 977, 978, 979, 980 and 981 it applies to dissolutions accomplished by the one method as well as the other, authorized under the laws of Missouri, and this the defendant is ready to verify.

Wherefore, relying upon each and all of the defenses presented in this answer, this defendant prays that plaintiff take nothing by this suit and that this defendant go hence without day.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Attorneys for Defendant.

J. D. JOHNSON,
H. S. PRIEST,
Of Counsel.

164 EXHIBIT A.

THE STATE OF TEXAS
vs.
WATERS-PIERCE OIL COMPANY.

NOVEMBER 5TH, 1900.

This day this cause was called for trial; and thereupon came the plaintiff, the State of Texas, by her County Attorney, and also came

Andrew M. Finlaw, the intervenor, but the defendant, the Waters-Pierce Oil Company, came not; and it appearing to the Court that on, to-wit, the 30th day of October, 1900, Andrew M. Finlay, as intervenor, did file his plea of intervention in this cause, wherein as former president of the defendant company he did advise the Court of the dissolution of said defendant corporation and did attach to his plea of intervention certain exhibits, which plea of intervention is supported by the affidavit of said Andrew M. Finlay; and thereupon the plaintiff, through her County Attorney, did file its application for a continuance of said cause, same being a first application, which application was resisted by the intervenor for insufficiency upon its face; and it appearing to the Court after hearing objections to said application for continuance and being duly advised in the premises, that said application was insufficient in law, the same was overruled; to which action of the Court the plaintiff then and there excepted.

Thereupon came on to be heard the plea of intervenor suggesting the dissolution of defendant company, together with the plaintiff's first supplemental petition in reply thereto, and the exceptions of said intervenor to said first supplemental petition, and the Court after hearing the pleadings, evidence and argument of counsel, is of opinion that the law is with the intervenor.

165 It is therefore ordered, adjudged and decreed by the Court that plaintiff's exceptions contained in its first supplemental petition to intervenor's plea of intervention, as well as intervenor's exceptions to plaintiff's first supplemental petition, be and the same are hereby overruled; and the Court having heard testimony and being advised in the premises, does consider, order, adjudge and decree that the plea of intervention, filed herein by Andrew M. Finlay be and the same is hereby sustained. And by reason of the dissolution of defendant, the Waters Pierce Oil Company, duly shown in the premises, it is further ordered, adjudged and decreed that this suit be and the same is hereby abated and dismissed; to which ruling of the Court the plaintiff, by its County Attorney, did then and there except, and at the same time gave notice of appeal in open Court to the Court of Civil Appeals for the Third Supreme Judicial District of Texas.

(Endorsed:) No. 24,551. State of Texas *vs.* Waters-Pierce Oil Co. Defendant's 3rd Amended Original Answer. Filed May 8th, 1907, D. J. Pickle, Clerk.

166 *Order of Exceptions.*

MAY 10TH, 1907.

24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL CO.

And now on this the 10th day of May, A. D. 1907, came the parties by their respective attorneys, and thereupon came on to be

heard the defendant's exceptions to plaintiff's amended original petition, and same having been argued and submitted and being fully understood the court is of the opinion that same should all be overruled except special exception number 70, which should be sustained;

It is therefore ordered that all of said defendant's exceptions be and are overruled except special exception number 70 which is by the Court sustained.

To which action and ruling of the Court the said defendant except in so far as such ruling is against it.

167 *Application for Change of Venue.*

Filed May 13th, 1907.

In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
v.
WATERS PIERCE OIL COMPANY.

Now comes the Waters Pierce Oil Company, the defendant in the above entitled and numbered cause, by its attorneys, and moves the court to grant to it a change of venue in this case, and for reason therefor shows to the court:

That there exists in Travis County, where this suit is pending, so great a prejudice against this defendant that it cannot obtain a fair and impartial trial in this county.

As a part of this motion and in support thereof defendant attaches hereto, and asks to be considered as a part hereof the affidavit of Sam Harlan, an agent of the defendant residing in Travis County, and the affidavits of C. H. Allen, Gus Felder, Jas. E. Lucy and J. C. Adrian, four credible persons residing in Travis County, and each showing that there exists in this county so great a prejudice against this defendant that it cannot obtain a fair and impartial trial of this cause in this county.

Defendant further shows to the court that the venue of this cause should not be changed to Williamson County, the court house of which is nearest to the court house of Travis County, for the reason that said Williamson County is subject to an objection sufficient to authorize a change of venue of this cause from said county in the first instance, in this: That there exists in Williamson County so great a prejudice against this defendant that it could not
168 obtain a fair and impartial trial in said county; defendant attaches hereto, and in support hereof the affidavit of R. E. Lauck, its local agent at Taylor, in Williamson County, Texas, and the affidavits of James A. Thompson, Howard Bland and S. G. Yakey, three credible persons and residents of Williamson County, each showing that there exists in said Williamson County so great a

prejudice against this defendant that it could not obtain a fair and impartial trial of this cause in said county.

Wherefore, this defendant moves the court to change the venue of this cause from this county to some county other than Williamson County.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEADMAN,
Attorneys for Defendant.

J. D. JOHNSON,
H. S. PRIEST,
Of Counsel.

In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
v.
WATERS PIERCE OIL COMPANY.

THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned officer, on this day personally appeared Sam Harlan, a credible person, who, being by me first duly sworn, on oath deposes and says that he is a resident of
169 Travis County Texas, and that he is an agent of the Waters Pierce Oil Company, the defendant in the above entitled and numbered cause, and that there exists in Travis County so great a prejudice against said Waters Pierce Oil Company that it cannot obtain a fair and impartial trial of said cause in said county.

SAM HARLAN.

Subscribed and sworn to before me by Sam Harlan this the 11th day of May, A. D. 1907.

[SEAL.]

E. CARTLEDGE,
Notary Public, Travis County, Texas.

In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
v.
WATERS PIERCE OIL COMPANY.

THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned authority, on this day personally appeared C. H. Allen, a credible person, who, being by me first duly

sworn, on oath deposes and says that he is a resident of Travis County, State of Texas, and that there exists in said Travis County so great a prejudice against the Waters Pierce Oil Company that the said Waters Pierce Oil Company cannot obtain a fair and impartial trial of the above entitled and numbered cause in said county.

C. H. ALLEN.

Subscribed and sworn to before me by C. H. Allen this the 11th day of May, A. D. 1907.

[SEAL.]

E. CARTLEDGE,
Notary Public, Travis County, Texas.

170 In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
v.
WATERS PIERCE OIL COMPANY.

THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned authority, on this day personally appeared Gus Felder, a credible person, who, being by me first duly sworn, on oath deposes and says that he is a resident of Travis County, State of Texas, and that there exists in said Travis County so great a prejudice against the Waters Pierce Oil Company that the said Waters Pierce Oil Company cannot obtain a fair and impartial trial of the above entitled and numbered cause in said county.

GUS FELDER.

Subscribed and sworn to before me by Gus Felder this the 11th day of May, A. D. 1907.

[SEAL.]

E. CARTLEDGE,
Notary Public, Travis County, Texas.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

Suit Pending in the District Court of Travis County, Texas, 26th Judicial District.

THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned officer, on this day personally appeared Jas. E. Lucy, a credible person, who, being by me first duly sworn, on oath deposes and says: that he is a resident of
171 Travis County, Texas, and that there exists in said Travis County so great a prejudice against the Waters-Pierce Oil

Company that the said Waters-Pierce Oil Company cannot obtain a fair and impartial trial of the above entitled and numbered cause in said county.

JAS. E. LUCY.

Subscribed and sworn to before me by Jas. E. Lucy this 11th day of May, A. D. 1907.

[SEAL.] E. CARTLEDGE,
Notary Public, Travis County, Texas.

In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
v.
WATERS PIERCE OIL COMPANY.

THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned authority, on this day personally appeared J. C. Adrian, a credible person, who, being by me first duly sworn, on oath deposes and says that he is a resident of Travis County, State of Texas, and that there exists in said Travis County so great a prejudice against the Waters Pierce Oil Company that the said Waters Pierce Oil Company cannot obtain a fair and impartial trial of the above entitled and numbered cause in said county.

J. C. ADRIAN.

Subscribed and sworn to before me by J. C. Adrian this the 11th day of May, A. D. 1907.

[SEAL.] E. CARTLEDGE,
Notary Public, Travis Co., Texas.

172 THE STATE OF TEXAS, *County of Williamson:*

Before me, the undersigned officer, on this day personally appeared R. E. Lauck, a credible person, who, being by me first duly sworn, on oath deposes and says that he is a resident of Williamson County, Texas, and is the agent of the Waters-Pierce Oil Company at Taylor in said county, and that there exists in said Williamson County so great a prejudice against said Waters-Pierce Oil Company that said Waters-Pierce Oil Company could not obtain in said county a fair trial of the case now pending in the District Court of Travis County, Texas, 26th Judicial District, wherein the State of Texas is suing said Waters-Pierce Oil Company for a cancellation of its permit to do business in Texas, and for the recovery of penalties against said Waters-Pierce Oil Company for alleged violations of the anti-trust laws of this State.

R. E. LAUCK,

Subscribed and sworn to before me by R. E. Lauck this 9th day of May, A. D. 1907.

[SEAL.] R. C. BRIGGS,
Notary Public, Williamson County, Texas.

THE STATE OF TEXAS, *County of Williamson:*

Before me, the undersigned officer, on this day personally appeared Howard Bland, a credible person, who, being by me first duly sworn, on oath deposes and says that he is a resident of Williamson County, Texas, and that there exists in said county so great a prejudice against the Waters-Pierce Oil Company that said Waters-Pierce Oil Company could not obtain in said county a fair trial of the case now pending in the District Court of Travis County,
173 Texas, 26th Judicial District, wherein the State of Texas is suing said Waters-Pierce Oil Company for a cancellation of its permit to do business in this State, and for the recovery of penalties against said Waters-Pierce Oil Company for alleged violations of the anti-trust laws of this State.

HOWARD BLAND.

Subscribed and sworn to before me by Howard Bland this 9th day of May, A. D. 1907.

[SEAL.] H. C. MANTOR,
Notary Public, Williamson County, Texas.

THE STATE OF TEXAS, *County of Williamson:*

Before me, the undersigned officer, on this day personally appeared S. G. Yakey, a credible person, who, being by me first duly sworn, on oath deposes and says that he is a resident of Williamson County, Texas, and that there exists in said Williamson County so great a prejudice against the Waters-Pierce Oil Company that said Waters-Pierce Oil Company could not obtain in said county a fair trial of the case now pending in the District Court of Travis County, Texas, 26th Judicial District, wherein the State of Texas is suing said Waters-Pierce Oil Company for a cancellation of its permit to do business in Texas, and for the recovery of penalties against said Waters-Pierce Oil Company for alleged violations of the anti-trust laws of this State.

S. G. YAKEY.

Subscribed and sworn to before me by S. G. Yakey this 9th day of May, A. D. 1907.

[SEAL.] H. C. MANTOR,
Notary Public, Williamson County, Texas.

174 THE STATE OF TEXAS, *County of Williamson:*

Before me, the undersigned officer, on this day personally appeared Jas. A. Thompson, a credible person, who, being by me first duly sworn, on oath deposes and says: that he is a resident of Wil-

liamson County, Texas, and that there exists in said county so great a prejudice against the Waters Pierce Oil Company that said Waters Pierce Oil Company could not obtain in said county a fair trial of the case now pending in the District Court of Travis County, Texas, 26th Judicial District, wherein the State of Texas is suing said Waters Pierce Oil Company for a cancellation of its permit to do business in Texas, and for the recovery of penalties for alleged violations of the anti-trust laws of this State.

JAMES A. THOMPSON.

Subscribed and sworn to before me by James A. Thompson this 9th day of May, A. D. 1907.

[SEAL.] R. C. BRIGGS,
Notary Public, Williamson County, Texas.

(Endorsed:) No. 24,551. State of Texas *vs.* Waters-Pierce Oil Co. Application for Change of Venue. Filed May 13th, 1907. D. J. Pickle, Clerk.

175 *Plaintiff's Answer to Application for Change of Venue.*

Filed May 13th, 1907.

In the District Court of Travis Co., Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL CO.

Now comes the State of Texas, plaintiff in the above entitled and numbered cause, and in answer to the application of defendant for a change of venue, and says:

That there does not exist in Travis County so great a prejudice against this defendant that it cannot obtain a fair and impartial trial in this county, and plaintiff says defendant can obtain a fair and impartial trial in this county; and the plaintiff appends hereto affidavits of creditable persons residing in said county in support of this statement.

Plaintiff asks in case the Court holds that the facts stated in defendant's application with reference to Travis Co. be held to exist that it be given additional time to controvert said affidavit in so far as it applies to Williamson Co.

R. V. DAVIDSON,
Att'y Gen.
J. P. LIGHTFOOT,
Assistant.
JNO. W. BRADY,
G. W. ALLEN,
GREGORY & BATTS,
Att'ys for Plaintiff.

176 No. 24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL CO.

THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned authority, on this day personally appeared Bob Wolf, Nelson Houser, R. E. Lee, Jno. B. Patterson, C. C. Baker, S. T. Carpenter, J. Gregg Hill, all credible persons, and each of them says that he is a resident of Travis Co., Texas, and says that defendant in this cause can secure in this County a fair and impartial trial, and that there does not exist in Travis Co. so great a prejudice against said defendant that it cannot obtain a fair and impartial trial of this cause in this County.

BOB WOLF.
NELSON HOUSER.
R. E. LEE.
JOHN B. PATTERSON.
C. C. BAKER.
S. T. CARPENTER.
J. GREGG HILL.

Subscribed and sworn to before me this 13th day of May, A. D. 1907, by above named parties.

[SEAL.] D. J. PICKLE,
Clerk Dist. Court, Travis Co., Texas.

(Endorsed:) No. 24,551. The State of Texas *vs.* Waters Pierce Oil Co. Plaintiff's Answer to Application for Change of Venue. Filed May 13, 1907. D. J. Pickle, Clerk.

177 *Order Overruling Application for Change of Venue.*

MAY 17TH, 1907.

24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL CO.

And now on this the 13th day of May, A. D. 1907, came the parties by their respective attorneys and the defendants presented their application for a change of venue of this cause to some other County than Travis and Williamson, and the hearing of said application continued from day to day until this the 17th day of May, A. D. 1907, when the Court rules that the said application is not well taken and should be overruled;

It is therefore ordered by the Court that the said application of the defendant for a change of venue of this cause be and is hereby now overruled and a change of venue is refused.

To which ruling of the Court the defendant in open Court excepts.

178 *Defendant's Bill of Exceptions No. 5.*

Filed June 29th, 1907.

In the District Court of Travis County, Texas, 26th District.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

Be it remembered that on the hearing of the defendant's application for a change of venue in this case, on to-wit: the 14th day of May, A. D. 1907, C. J. Johnson, being sworn as a witness on the hearing of said application for change of venue, testified that he was the foreman of the grand jury of the District Court of Travis County, Texas, at the September Term, A. D. 1906, in and for the Fifty-third Judicial District, being the grand jury which returned the indictment against H. C. Pierce charging him with the offense of false swearing;

And be it further remembered that thereupon the defendant offered to prove by said witness, C. J. Johnson, that said grand jury which returned said indictment had no evidence before it before returning said indictment other than the original affidavit upon which the said indictment was predicated, and heard no testimony showing or tending to show that the statement contained in said affidavit, or any of them, were false.

And be it further remembered that to the introduction of said evidence the State objected on the ground that to permit the said witness to so testify would violate the secrecy of the proceedings of the grand jury, and would violate the oath of said witness as
179 a grand juror and which objections were sustained by the Court and the Court refused to permit defendant to prove said facts by said witness, and to which action and ruling of the Court the defendant then and there excepted, and here now tenders this its bill of exception to said action of the Court, and asks that the same be allowed and ordered filed and made a part of the record of this cause.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Attorneys for Defendant.

Examined and allowed this 29th day of June, 1907, with the following explanation, the evidence mentioned in the bill was excluded because the undersigned thought it contrary to public policy to go into an inquiry involving a disclosure of the proceedings by which the Grand Jury had found an indictment. I do not know whether, if the ruling had been otherwise, the defendant could have shown what it offered to show or not. But in passing upon the motion for

a change of venue I assumed that it could have done so and that what it offered to prove concerning the matter mentioned in the bill was a fact.

V. L. BROOKS,
Judge 26th Judicial District of Texas.

(Endorsed:) No. 24551. The State of Texas *vs.* Waters Pierce Oil Co. Defendant's Bill of Exceptions No. 5. Filed June 29, 1907. D. J. Pickle, Clerk.

180 *Defendant's Bill of Exceptions No. 6.*

Filed June 29th, 1907.

In the District Court of Travis County, Texas, 26th District.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

Be it remembered that on the hearing of the defendant's application for a change of venue in this case, on, to-wit: the 14th day of May, A. D. 1907, H. M. Metz, being sworn as a witness on the hearing of said application for change of venue, testified that he was a member of the grand jury of the District Court of Travis County, Texas, at the September Term, A. D. 1906, in and for the Fifty-third Judicial District, being the grand jury which returned the indictment against H. C. Pierce charging him with the offense of false swearing.

And be it further remembered that thereupon the defendant offered to prove by said witness, H. M. Metz, that said grand jury which returned said indictment had no evidence before it before returning said indictment other than the original affidavit upon which the said indictment was predicated, and heard no testimony showing or tending to show that the statements contained in said affidavit, or any of them, were false.

And be it further remembered that to the introduction of said evidence the State objected on the ground that to permit the said witness to so testify would violate the secrecy of the proceed-
181 ings of the grand jury, and would violate the oath of said witness as a grand juror, and which objections were sustained by the Court and the Court refused to permit defendant to prove said facts by said witness ,and to which action and ruling of the Court the defendant then and there excepted, and here now tenders this its bill of exception to said action of the Court, and asks that the same be allowed and ordered filed and made a part of the record of this cause.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Attorneys for Defendant.

The foregoing bill of exceptions was presented to me the 29th day of June, 1907, and is hereby allowed and ordered filed, with the explanation that the evidence mentioned in the bill was excluded for the reasons and to the extent shown in the qualification to defendant's bill of exceptions No. 5, relating to evidence of witness Johnson on same subject.

V. L. BROOKS,
Judge 26th Judicial District.

(Endorsed:) No. 24551. The State of Texas *vs.* Waters Pierce Oil Co. Defendant's Bill of Exceptions No. 6. Filed June 29, 1907. D. J. Pickle, Clerk.

182 *Defendant's Bill of Exceptions No. 7.*

Filed June 29, 1907.

In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

Be it remembered that on May 13th, A. D. 1907, and before either party to the above entitled and numbered cause had announced ready for trial, the defendant, the Waters-Pierce Oil Company, filed in said cause and duly presented to the Court its application for a change of venue in said cause, which said application for change of venue, together with the endorsements thereon, is in words and figures as follows, to-wit:

In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS-PIERCE OIL COMPANY.

Now comes, the Waters-Pierce Oil Company, the defendant in the above entitled and numbered cause, by its attorneys, and moves the Court to grant to it a change of venue in this case, and for reason therefor shows to the Court:

That there exists in Travis County, where this suit is pending, so great a prejudice against this defendant that it cannot obtain a fair and impartial trial in this county.

As a part of this motion and in support thereof defendant attaches

hereto, and asks to be considered as a part hereof the affi-
183 davit of Sam Harlan, an agent of the defendant residing in Travis County, and the affidavits of C. H. Allen, Gus Felder, Jas. E. Lucy and J. C. Adrian, four credible persons residing in Travis County, and each showing that there exists in this County so great a prejudice against this defendant that it cannot obtain a fair and impartial trial of this cause in this County.

Defendant further shows to the Court that the venue of this cause should not be changed to Williamson County, the Court House of which is nearest to the Court House of Travis County, for the reason that said Williamson County is subject to an objection sufficient to authorize a change of venue of this cause from said county in the first instance, in this: That there exists in Williamson County so great a prejudice against this defendant that it could not obtain a fair and impartial trial in said county; defendant attaches hereto, and in support hereof the affidavit of R. E. Lauck, its local agent at Taylor, in Williamson County, Texas, and the affidavits of James A. Thompson, Howard Bland and S. G. Yakey, three credible persons, and residents of Williamson County, each showing that there exists in said Williamson County so great a prejudice against this defendant that it could not obtain a fair and impartial trial of this cause in said County.

Wherefore, this defendant moves the Court to change the venue of this cause from this County to some County other than Williamson County.

CLARK & BOLINGER,
COCHRAN & PENN,
D. W. ODELL,
N. A. STEDMAN,
Attorneys for Defendant.

J. D. JOHNSON,
H. S. PRIEST,
Of Counsel.

184 In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned officer, on this day personally appeared Sam Harlan, a credible person, who, being by me first duly sworn, on oath deposes and says that he is a resident of Travis County, Texas, and that he is an agent of the Waters-Pierce Oil Company, the defendant in the above entitled and numbered cause, and that there exists in Travis County so great a prejudice against

said Waters Pierce Oil Company that it cannot obtain a fair and impartial trial of said cause in said County.

SAM HARLAN.

Subscribed and sworn to before me by Sam Harlan this the 11th day of May, A. D. 1907.

E. CARTLEDGE,

[L. S.] *Notary Public, Travis County, Texas.*

185 In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned authority, on this day personally appeared C. H. Allen, a credible person, who, being by me first duly sworn, on oath deposes and says that he is a resident of Travis County, State of Texas, and that there exists in said Travis County so great a prejudice against the Waters-Pierce Oil Company that the said Waters-Pierce Oil Company cannot obtain a fair and impartial trial of the above entitled and numbered cause in said County.

C. H. ALLEN,

Subscribed and sworn to before me by C. H. Allen this the 11th day of May, A. D. 1907.

E. CARTLEDGE,

[L. S.] *Notary Public, Travis County, Texas.*

186 In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS-PIERCE OIL COMPANY.

THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned authority, on this day personally appeared Gus Felder, a credible person, who, being by me first duly sworn, on oath deposes and says that he is a resident of Travis County, State of Texas, and that there exists in said Travis County so great a prejudice against the Waters Pierce Oil Company that the

said Waters Pierce Oil Company cannot obtain a fair and impartial trial of the above entitled and numbered cause in said county.

GUS FELDER.

Subscribed and sworn to before me by Gus Felder this the 11th day of May, A. D. 1907.

E. CARTLEDGE,

[L. S.] *Notary Public, Travis County, Texas.*

187 No. 24551.

THE STATE OF TEXAS

vs.

WATERS PIERCE OIL COMPANY.

Suit Pending in the District Court of Travis County, Texas, 26th Judicial District.

THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned officer, on this day personally appeared Jas. E. Lucy, a credible person, who, being by me first duly sworn, on oath deposes and says: that he is a resident of Travis County, Texas, and that there exists in said Travis County so great a prejudice against the Waters Pierce Oil Company that the said Waters Pierce Oil Company cannot obtain a fair and impartial trial of the above entitled and numbered cause in said County.

JAS. E. LUCY.

Subscribed and sworn to before me by Jas. E. Lucy, this 11th day of May, A. D. 1907.

E. CARTLEDGE,

[L. S.] *Notary Public, Travis County, Texas.*

188 In the District Court of Travis County, Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS

vs.

WATERS PIERCE OIL COMPANY.

THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned authority, on this day personally appeared J. C. Adrian, a credible person, who, being by me first duly sworn, on oath deposes and says that he is a resident of Travis County, State of Texas, and that there exists in said Travis County so great a prejudice against the Waters Pierce Oil Company that the said Waters Pierce Oil Company cannot obtain a fair and impartial trial of the above entitled and numbered cause in said county.

J. C. ADRIAN.

Subscribed and sworn to before me by J. C. Adrian this 11th day of May, A. D. 1907.

E. CARTLEDGE,
[L. S.] *Notary Public, Travis County, Texas.*

189 THE STATE OF TEXAS, *County of Williamson:*

Before me, the undersigned officer, on this day personally appeared R. E. Lauck, a credible person, who, being by me first duly sworn, on oath deposes and says that he is a resident of Williamson County, Texas, and is the agent of the Waters Pierce Oil Company at Taylor in said County, and that there exists in said Williamson County so great a prejudice against said Waters Pierce Oil Company that said Waters Pierce Oil Company could not obtain in said County a fair trial of the case now pending in the District Court of Travis County, Texas, 26th Judicial District, wherein the State of Texas is suing said Waters Pierce Oil Company for a cancellation of its permit to do business in Texas, and for the recovery of penalties against said Waters Pierce Oil Company for alleged violations of the Anti-Trust Laws of this State.

R. E. LAUCK.

Subscribed and sworn to before me by R. E. Lauck this 9th day of May, A. D. 1907.

[L. S.] R. C. BRIGGS,
Notary Public, Williamson County, Texas.

190 THE STATE OF TEXAS, *County of Williamson:*

Before me, the undersigned officer, on this day personally appeared Howard Bland, a credible person, who, being by me first duly sworn, on oath deposes and says that he is a resident of Williamson County, Texas, and that there exists in said County so great a prejudice against the Waters Pierce Oil Company that said Waters Pierce Oil Company could not obtain in said county a fair trial of the case now pending in the District Court of Travis County, Texas, 26th Judicial District, wherein the State of Texas is suing said Waters Pierce Oil Company for a cancellation of its permit to do business in this state, and for the recovery of penalties against said Waters Pierce Oil Company for alleged violations of the Anti-Trust Laws of this State.

HOWARD BLAND.

Subscribed and sworn to before me by Howard Bland this 9th day of May, A. D. 1907.

[L. S.] H. C. MANTOR,
Notary Public, Williamson County, Texas.

191 THE STATE OF TEXAS, *County of Williamson:*

Before me, the undersigned officer, on this day personally appeared S. G. Yakey, a credible person, who, being by me first duly sworn, on oath deposes and says that he is a resident of Williamson

County, Texas, and that there exists in said Williamson County, so great a prejudice against the Waters Pierce Oil Company that said Waters Pierce Oil Company could not obtain in said County a fair trial of the case now pending in the District Court of Travis County, Texas, 26th Judicial District, wherein the State of Texas is suing said Waters Pierce Oil Company for a cancellation of its permit to do business in Texas, and for the recovery of penalties against said Waters Pierce Oil Company for alleged violations of the Anti-Trust Laws of this State.

S. G. YAKEY.

Subscribed and sworn to before me by S. G. Yakey this 9th day of May, A. D. 1907.

[L. S.] H. C. MANTOR,
Notary Public, Williamson County, Texas.

192 THE STATE OF TEXAS, *County of Williamson:*

Before me, the undersigned officer, on this day personally appeared Jas. A. Thompson, a credible person, who, being by me first duly sworn, on oath deposes and says: that he is a resident of Williamson County, and that there exists in said County so great a prejudice against the Waters Pierce Oil Company that said Waters Pierce Oil Company could not obtain in said County a fair trial of the case now pending in the District Court of Travis County, Texas, 26th Judicial District, wherein the State of Texas is suing said Waters Pierce Oil Company for a cancellation of its permit to do business in Texas, and for the recovery of penalties for alleged violations of the Anti-Trust Laws of this State.

JAMES A. THOMPSON.

Subscribed and sworn to before me by James A. Thompson this 9th day of May, A. D. 1907.

[L. S.] R. C. BRIGGS,
Notary Public, Williamson County, Texas."

(Endorsed:) "No. 24,551. State of Texas *vs.* Waters-Pierce Oil Co. Application for Change of Venue. Filed May 13th, 1907. D. J. Pickle, Clerk."

193 And be it further remembered that, upon the presentation to the Court by defendant of the said application for change of venue, the plaintiff, the State of Texas filed and presented to the Court its answer to said application for a change of venue as follows:—

In the District Court of Travis Co., Texas, 26th Judicial District.

No. 24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL COMPANY.

Now comes the State of Texas, plaintiff in the above entitled and numbered cause, and in answer to the application of defendant for a change of venue, and says:

That there does not exist in Travis County so great a prejudice against this defendant that it cannot obtain a fair and impartial trial in this county, and plaintiff says defendant can obtain a fair and impartial trial in this county, and the plaintiff appends hereto affidavits of credible persons, residing in said county, in support of this statement.

Plaintiff asks in case the court holds that the facts stated in defendant's application with reference to Travis Co. be held to exist that it be given additional time to controvert said affidavit so far as it applies to Williamson Co.

R. V. DAVIDSON, *Att'y Gen.*
J. P. LIGHTFOOT, *Assistant.*
JNO. W. BRADY,
G. W. ALLEN,
GREGORY & BATTS,
Att'ys for Plaintiff.

194 No. 24551.

THE STATE OF TEXAS
vs.
WATERS PIERCE OIL CO.

THE STATE OF TEXAS, *County of Travis:*

Before me, the undersigned authority, on this day personally appeared Bob Wolf, Nelson Houser, R. E. Lee, Jno. B. Patterson, C. C. Baker, S. T. Carpenter, J. Gregg Hill, all credible persons, and each of them says that he is a resident of Travis County, Texas, and says that defendant in this cause can secure in this County a fair and impartial trial, and that there does not exist in Travis County so great a prejudice against said defendant that it cannot obtain a fair and impartial trial of this cause in this County.

BOB WOLF.
R. E. LEE.
S. T. CARPENTER.
JOHN B. PATTERSON.
J. GREGG HILL.
NELSON HOUSER.
C. C. BAKER.

Subscribed and sworn to before me this 13th day of May, A. D. 1907, by above named parties.

D. J. PICKLE,
Clerk District Court, Travis Co., Texas."

(Endorsed:) "No. 24,551. The State of Texas *vs.* Waters Pierce Oil Co. Plaintiff's Answer to Application for Change of Venue. Filed May 13th, 1907. D. J. Pickle, Clerk."

195 And be it further remembered that said application for change of venue thereupon came on to be heard by the Court, upon the issues joined by said application and plaintiff's said answer thereto, and that upon the hearing of said application, beginning May 13th, 1907, and concluding May 17th, 1907, evidence was introduced and heard by the Court, and that the following is a true and correct statement of all of the material evidence introduced and heard by the Court upon the hearing of said application for change of venue, to-wit:—

JOHN E. SHELTON, a witness for the Defendant, being duly sworn, testified as follows:

My name is John E. Shelton. I have lived in Travis County, about twenty-five years, and am now engaged in the practice of law, and am also Chairman of the Democratic Executive Committee of Travis County, having occupied this position now for a little more than three years. I attended the meeting of the last Democratic Convention of the State of Texas, and was present when nominations were made by that convention for United States Senator, which resulted in the nomination of Mr. Bailey. Opposition arose to Mr. Bailey which resulted in the holding of primary elections in Travis County to instruct our Representatives to vote for or against Mr. Bailey; but how much of this opposition arose subsequent to the State Democratic Convention and the nomination of Mr. Bailey by that convention, I do not know. Personally, I was opposed to Mr. Bailey all the time. The result of the primary elections held in Travis County was that our Representatives were instructed to vote against Mr. Bailey. I do not know by what majority, but it was a substantial majority, and I did all in my power to get a majority against Mr. Bailey. I do not know the number of votes polled in the primary elections, and could not at this time even approximate the number. I do not know the basis of the
196 opposition to Mr. Bailey, generally, but I was opposed to him because I didn't think he was an honest man. The principal public objection to Mailey, in my opinion, was what cropped out as to his connection with the Waters Pierce Oil Company, and among the people I have heard express themselves, this objection involved the opinion that the Waters Pierce Oil Company was a trust or a monopoly, and that it was re-admitted to the State by fraud. The campaign prior to the elections held in this County for the purpose of instructing our Representatives, became rather warm, and the opponents of Mr. Bailey were vigorous in their oppo-

sition to him; and it developed that the substantial portion of the opposition to Mr. Bailey was due to his alleged connection with the Waters Pierce Oil Company and the belief that the Waters Pierce Oil Company was a trust or a monopoly and was re-admitted into the State by fraud; some of the opposition, however, was on account of the fact that he was not thought to be honest. I do not know for certain the relative strength of the Democratic party in Texas, with reference to the total voting population, but since the Terrell Election Law has gone into effect I think the average is about three to one; before that it was sometimes the other way. In the campaign that took place prior to the election held early in January last I heard a good many persons express themselves with reference to whether or not the Waters Pierce Oil Company was a trust or monopoly and that its re-admission into the State was a fraud, but I must admit that most of my discussions were either Bailey or anti-Bailey. As to the concensus of opinion among the people I talked to about that matter at that time, it was generally believed that it was a trust; I can't call to mind any who didn't think it was a trust. Since last Monday or possibly Friday a week ago, I have discussed the question with possibly three hundred and twenty people;
197 they were people from all over the county, we having had a special venire here and I talked with as many as I could from different portions of the County. With almost every man I talked I asked the direct question with reference to the Waters Pierce Oil Company, and the great majority thought it was a trust. In a general way, from what I read in the local newspapers, which published daily reports of the testimony and other proceedings in the Bailey Investigation, I was familiar with the Investigation which was had in the Legislature concerning Mr. Bailey. The greater portion of the excitement over the matter, terminated with the Primary Election, that is the people quit talking about it so much. I quit talking about it myself, and people quit coming to me to talk about it.

The way I came to talk about the matter with a number of people a week or ten days ago, was at the request of Judge Penn. He came to see me, I think it was a week ago Wednesday, and asked me for a list of the members of the Anti-Bailey Club and also a poll list. He then wanted to know if I could take the time to talk to some of the people and see what I could find out, but I said I couldn't, as I would be busy in the Richards case. He said that that would be about the best opportunity I could get, and asked me to interview as many people as I could, which I did. I also spent one day in Manor for the special purpose of finding out what opinion the people in that section held on the question. There was no agreement entered into between us as to the compensation I was to get for this work, but I expected then, and now expect, to get paid for the work.

I do not remember the length of time the campaign was on, but we cut it as short as we could. *I* number of speeches were made here in Austin. Judge Terrell spoke against Mr. Bailey, as did Mr. Taylor Moore, and I also made a speech one night at the Court

House. I heard part of Mr. Moore's speech, but didn't
198 lis en closely and do not remember the arguments he advanced. Mr. Moore at one time was District Attorney for this District, and also represented Travis County in the Legislature for a number of years; he is the father-in-law of Mr. Cullen Thomas, of Waco. I did not hear Judge Terrell's speech. I advanced the argument in my speech, that Senator Bailey was dishonest, and that I thought he was connected with the re-admission of the trust. We divided our argument, and I presume that Mr. Moore took the part that the re-admission of the Waters Pierce Oil Company into the Texas was a fraud. We had a good crowd at the Court House that night, the speeches were well received and with much applause. I believe that speech at the Court House was the only one I made, and I attended no speaking at any other portion of the county. Mr. Cocke, the gentleman who later preferred charges against Mr. Bailey in the Legislature, was sent by us to Pflugerville and Dessau to make speeches, and Mr. Cocke also spoke here in Austin. I am not certain whether or not Mr. Cocke spoke at Manor; there were so many appointments, I didn't keep them all in mind.

The call for a Primary Election in Travis County to instruct the Representatives to vote for or against Mr. Bailey was brought about by the sending of a postal card, which was printed at my suggestion, to each of the 46 or 47 members of the Executive Committee of Travis County. The Postal card stated that if the members of the Committee wanted the Primary Election to sign the card and return it. I do not remember now how many joined in the request, but a large majority of them did so. I have the cards, but am not sure.

In my investigation made during the last week or ten days I heard about two hundred or two hundred and fifty men express themselves with reference to the question as to whether or not such
prejudice existed in Travis County against the Waters Pierce
199 Oil Company that it could not get a fair trial, to the effect that individually they had their minds made up; at least this was the expression of a great majority of them. I went to the best men I knew because I wanted to find out just what the sentiment was, and these men were from all over the county. My advice was that it was not necessary to make this investigation but that the desired information could be had by taking the poll list and selecting a number of men indiscriminately and examining them in regard to the matter.

From my knowledge of conditions in this county during the campaign, and from what I have heard since and from my general knowledge, I believe it would be possible to secure a jury of unprejudiced men in Travis County for the trial of this case, but I don't see how it could be done in the way juries are ordinarily selected. Now, I found this, that among the Swedish people, a number of them said in their discussions with me, that they hadn't read enough on the question to form an opinion; but they were about the only

people I spoke to who hadn't read about it and discussed it, and had made up their minds.

I was not present in the House of Representatives and did not hear Representative Duncan make a speech in the Legislature against Mr. Bailey.

Cross-examination:

I consider myself in the employ of the Waters Pierce Oil Company. I think there are about six thousand voters in Travis County, counting all who have paid their poll taxes and all who are exempt from the payment of a poll tax. As to whether or not they are qualified voters, I can not say, but I suppose there isn't much difference, that is, that there are about as many qualified voters as there are qualified jurors. Out of the 6,000 I think at least 5,900 are honest men, but I don't see how you could get twelve jurors
200 who hadn't made up their minds and formed opinions on the subject. I talked to about three hundred people within the last week or ten days, that is, about five per cent. of the whole number.

From my discussions with parties at Manor, I do not think you could find twelve men there who hadn't made up their minds. I spoke to about forty or fifty men, among them being Mr. Wolf, Justice of the Peace, Mr. W. B. Raney, Mr. J. H. Allison, I am not sure, but I think I talked the question over with Mr. A. K. Anderson; also Dr. Hill, Mr. Wentland, and the other young man in the drug store; I talked to a young doctor who has recently come there from Bell County,—I can't think of his name; I talked to Mr. Jack Follmer and Mr. Victor Anderson, and many others whose names I can't recall at this time. I estimate that there — about 200 voters at the Manor box; possibly a few more. I now recall talking also to Mr. C. C. Kuempel, Mr. Nelson Houser, Theodore Westbrook, C. C. Baker and Mr. Shuberg, but I don't remember whether I mentioned this question to Mr. Shuberg or not. It is too hard to recall any other names, unless some one should suggest them to me; there were about fifty in all. I do not remember the substance of my conversation with Mr. Wolf; just remember that I asked him the general question. I would bring it up in this way: I asked him if the matter had been discussed, and he said it had; and I asked then if from his discussions he didn't think practically the whole community had its mind made up as to whether the Waters Pierce Oil Company was a trust or not, and he said he was of the opinion that such was the case. He said he didn't think there could be a trial without a change of venue. I had practically the same conversation with Mr. Follmer, Mr. Raney, Dr. Hill, and all of the others I spoke to about it. I overlooked one other person I talked to, namely, Buck
201 Christian. To a certain extent my questions were leading, but I didn't ask them direct if they thought the Waters Pierce Oil Company is a trust. I just asked their general opinion from what they read and heard, whether they thought it was a trust, and nearly every one said it was not only a trust, but frankly stated that they would not believe Mr. Pierce and his associates on oath.

In my conversation with these men I would ask if in their opinion it wouldn't be a little difficult to get a fair trial or in this county, and some said it would be, while a few said it would not be,—Mr. Christian and Mr. Allison being of the latter opinion. Mr. Baker said he thought it was a trust, and that he didn't think a jury could be gotten. Mr. Houser's conversation I can only recall generally, and I think he said that they could not secure a jury. I am not quite sure as to what every one said, but most of them I can remember. I kept a memorandum of the names of all the persons I spoke to about this matter, but indicated in this memorandum no more than whether they were favorable or unfavorable. This memorandum I turned over to Judge Penn.

Mr. Kuempel stated that in his community at Germania Hall, he had heard the question discussed a good deal, and in substance said he didn't think they could get a jury that would not be prejudiced one way or the other, that is, if a man had been a rank Bailey man, he would be in his favor, and if he were an anti-Bailey man he would be unfavorable.

I do not know how many people voted in the Bailey election. It was a comparatively small vote; nothing like the full strength of the county. I do not think there was fifty per cent. of the Democratic vote of the county polled, in spite of a rather warm campaign; and I was surprised that the Bailey people turned out so strong, and that the anti-Bailey people did not. At the Manor box, which was carried by Mr. Bailey by a large majority, the vote was less than
202 fifty per cent. of the total vote. The vote in the county at large was smaller than the vote in town, and at some of the boxes, three or four, for instance, Carl, Garfield, and Bee Cave, no election at all was held.

From Bee Cave, I talked to two people,—Mr. Bohls and Mr. Eugene Harrison. At Del Valle I talked to J. B. Norwood, George Ecklund, J. B. Smith and Dr. Shapard. All except Dr. Shapard told me they didn't thing a fair trial could be had in this county; Dr. Shapard would not express an opinion because his brother-in-law was in the case.

At Webberville I remember talking only to Mr. Manor; I think I spoke to Mr. Ingram at Garfield, but am not sure. If I did his name is on the list which I prepared for the purpose of issuing subpœnas.

Taking the other part of the county—at Pflugerville I spoke to Mr. Henry Bohls, Mr. Crowley, Mr. Blackman, and I believe to Mr. Ernest Pfluger, but as to the latter I am not certain. Mr. Crowley said positively he didn't think they could get a fair trial. I don't remember what Mr. Blackman said.

At Merrilltown I talked to Mr. C. S. True; and he said the people's minds were made up, to the effect that the Waters Pierce Oil Company is a trust, and that a jury could not be secured. He said they based their opinion on what they heard and read. I do not believe there is a man in the county who has read the papers and has discussed the matter, who doesn't think the Waters Pierce Oil Company is a trust, just as it is generally believed that the Standard Oil Com-

pany is a trust. I would ask this question: Now if in the trial of this case you were taken on the jury, do you believe that you could give as much credence to the people testifying in favor of the Waters Pierce Oil Company as to the others, and almost all inhesitatingly they would not. I do not believe from the way I look at the
203 matter, that substantially all the intelligent people of Travis County believe that the Standard Oil Company and the Waters Pierce Oil Company are a trust, but I believe a good many people think that, and I think a similar belief exists in every other county in the State. Any number of the people I talked to said that if they came here and took the oath as jurors, they would refuse to give justice to the Waters Pierce Oil Company, and many said they would not believe the bunch on oath.

In my own box, I think we vote about seventy-five, and I do not thing you could get twelve jurors from my box who would not come with the expectation of a conviction and intending to convict, unless there was strong proof to the contrary. This belief I predicate on the conversations I had with those people during the Bailey controversy and since. I will give the names of the following of my neighbors who I have no doubt are disqualified as jurors: W. D. Miller, W. C. Redd, E. P. Albrecht, H. Maud, Mr. Huebsch, I have forgotten his first name; he runs a confectionery store in South Austin; Bob Weyerman; John Wende, J. W. Templar, Will Paggi, and J. W. Blattner. My opinion that these men are disqualified as jurors is based on the idea that every intelligent person who has read the papers and discussed this matter, believes that the Waters Pierce Oil Company is a trust, and has his mind made up and could not be fair towards the company in a trial, even if he should try to be. I am of the opinion that if you took the poll list of the county and examined men indiscriminately, you would arrive at the same conclusion with regard to the whole county. Taking this view of the matter, I admit I haven't any idea as to how the State is going to get a trial in this case, as practically the same condition exists in other parts of the State. In some, take Hays County, for instant, it is even worse then in Travis County.

204 I do not believe there are two hundred jurors in this county who have never heard of the Waters Pierce Oil Company. I do not know that I have qualified as an expert witness in this case, but I do not think that out of the witnesses who have been summoned in this matter, that there are at least twelve who would qualify as jurors in this case, although there are a number of those witnesses I have never seen about the matter or spoken to about it. I did not hear the controverting affidavit read in this matter. I do not believe that it is possible that I came to a wrong conclusion about what Mr. Houser, Mr. Bob Wolf, Mr. Baker and the other parties from Manor said about this matter; and if they should swear here in court that they could give the defendant a fair trial, I would believe they had changed their minds since they spoke to me. I am not mistaken as to what Mr. Wolf and Mr. Baker said, because I talked to them too long, and remember it all very well.

My purpose in making the investigation was to find out if there

was a prejudgment in this case. My questions were not so shaped that it would be easy for them to acquiesce in what I asked; I wanted to honestly find a man who, if he made a statement to me, would make the same statement to any one else. I asked the people from both sides, Bailey and anti-Bailey, and not only those who I thought were going to be favorable to us. I wanted to talk to as many as I could find who would say the Waters Pierce Oil Company couldn't get a fair trial, but not as many as three or four hundred, and if I saw a man across the street whom I did not think would make a reply favorable to my client, I would let him alone and not ask him his opinion; I also wanted to know this for my own satisfaction, as well as to give service to my client. I was not interested in the least in their getting the case continued indefinitely.

I do not say that the campaign was a campaign against the
205 Waters Pierce Oil Company, but against Mr. Bailey. His connection with the Waters Pierce Oil Company was the cause of part of the opposition to him; but with me, I was opposed to him because I didn't think he was honest in general. I do not know that a great many other people voted against him for the same reason, and without reference to the Waters Pierce Oil Company. The only one I am certain about in this regard is myself.

From the Summit community I think I talked to Mr. Peyton and I remember talking to a man by the name of Parmer, and my conclusion as to that community is based on my conversation with those two men. I think there are about 24 votes at Summit.

From Dessau I spoke to Will Nehring. He said he was chairman of the box in the Bailey campaign, and he thought the people had their minds made up. My conclusions as to Dessau are based on what he told me.

I do not remember seeing anybody from Sprinkle. I spoke to Judge Penn about who lived there, and mentioned some he could have summoned. If one of those people were to say that they could get twelve good men for the case from there, I should think he had better knowledge of his community than I have, or he ought to have. Taking it generally, Mr. Houser at Manor ought to have better information about that than I have, but if he hasn't talked to any more there than I have, he couldn't have a better opinion than I have. This same statement applies to Mr. Kuempel and Mr. Baker.

From Manchaca, I spoke to Mr. Carpenter, who runs a gin out there, and is well known in that section, and is an intelligent man.

I don't remember talking to any body from Carl, but I don't think
there are twelve men there who could qualify as jurors in this
206 case. I know Bob Lee, and if he said he could qualify, I believe he could. Knowing him as well as I do, if he said you could get a certain number of honest jurors at Carl, I would be inclined to think that you could.

From Oakhill I saw the two Pattons and Mr. Dave Beckett. The substance of my conversation with them was that they didn't think there was any chance to get a fair and impartial trial.

From Pecan Springs, I talked to Mr. Cagle. I thought Mr. Cloud was from there, but he told me afterwards he lived in the city.

I don't remember talking to anybody from the Fourth Ward here

in the City. It is an extra large ward, having something like 600 voters. I will state that I made it a point to speak to people from the country, and talked to very few of the city people. I remember talking to Mr. R. C. Burleson of the third ward. I don't remember talking to anybody from the second ward. Mr. Burleson didn't attempt to express any opinion about his ward. I live in the First Ward, but outside of Mr. Capron, I don't remember talking to any one about this matter lately. I don't know if I talked to anybody in the 5th ward. I didn't talk to any one in the Sixth Ward. Abe Frank talked to me. From the seventh ward, the old tenth ward, I spoke to Mr. John Durst. I remember he and I were discussing the matter, probably he brought it up, but outside of him I don't remember any other person, that is, since I have been making this investigation.

There are more than three thousand voters here in the city, nearly four thousand according to the last poll list. I have talked to about 300 people, not only since I have started making this investigation, but during the Bailey campaign. I talked to them with reference to the Bailey opposition and taking the whole thing in connection.

I do not remember haw many of the people in the city voted
207 in the Bailey election, but there was a greater per cent. than in the county. The campaign was more hotly contested in the city than in the country. The Bailey people were more active than I wanted to see them. Senator Bailey himself was here and made several speeches. Senator Barret spoke for him in the county. I don't remember whether any local people spoke for Mr. Bailey, except that Mr. Francis spoke for him; I had forgot-en about that. Mr. Wynne of Fort Worth, spoke for Mr. Bailey at the Court House. But notwithstanding all that, less than 50% of all the voters in the county turned out at the election.

Redirect examination:

The opinion already expressed by me to the Court that a jury of fair and impartial men could not be gotten in this county, was entertained by me before I made this recent investigation, but this investigation has strengthened that opinion considerably.

I was not present in other counties of the State, but I read some of the press reports last fall and winter with reference to the Bailey matter. I remember that Comanche County held an election to instruct its representatives to vote for or against Mr. Bailey. Outside of Travis and Comanche Counties, no other counties in the State held such elections. There was some talk of one at Waco, but no election was held there.

I think it would be possible to get honest men to sit on the jury in this case, as I told Mr. Batts, who would try to give the Waters Pierce Oil Company a fair and impartial trial, but from my conversations with the people and what I know of my own knowledge, I believe they would be so prejudiced that they could not in fact give the company a fair trial.

208 Recross examination:

Personally I could not and would not take the oath as a juror in this case, because my convctions are so firm they could not be changed; and it would be impossible for me to attempt to decide the case on the facts. I am of the idea that most of the people of the county are so shaped up mentally as to take the same attitude I do; that when they once set their heads, they are set. It is my opinion that from the many people in this Court room now, it would be impossible to get a fair and impartial jury for this case. I do not think they would be able to do that which the law requires them to do, that is, to disregard any previous notions and decide the case on the evidence adduced before them.

D. J. PICKLE, a witness for the defendant, being duly sworn, testified as follows:

I am District Clerk of Travis County. I have with me an indictment returned by the Grand Jury of the 53rd Judicial District at the September Term, 1906, against H. C. Pierce, charging him with false swearing.

(The defendant here introduced in evidence the said indictment, being an indictment charging H. C. Pierce with false swearing for making the affidavit set out in the plaintiff's petition in this case, alleged to have been made at the time the Waters Pierce Oil Company obtained its permit to do business in Texas, on May 31, 1900.

The State objected to the introduction in evidence of said indictment, as immaterial. The Court overruled said objection, and admitted said indictment in evidence, but stated that it could not permit the indictment to be filed in this case).

209 JEFFERSON JOHNSON, a witness for the defendant, being duly sworn, testified as follows:

My name is Jefferson Johnson. I live in Austin. Have lived in the town about seventeen years. I was foreman of the Grand Jury of the 53rd Judicial District at the September Term, 1906, which returned an indictment against H. C. Pierce, charging him with false swearing. I do not remember the names of the other Grand Jurors. I remember the finding of that indictment against H. C. Pierce.

J. B. NORWOOD, a witness for the defendant, being duly sworn, testified as follows:

My name is J. B. Norwood. I live at Del Valle, in this County, about six miles from Austin, on the south side of the river. I have lived there twenty years. I am pretty well acquainted with the people in that community. I have always heard the Waters Pierce Oil Company spoken of as a trust by the people in my community; but I don't know that I have heard it spoken of as operating in the State in violation of the law. I mean that the people generally regard it as being a trust. I can't say how often I have heard the people in that community express themselves with reference to it; I don't think I ever heard it spoken of in any other way but as a trust.

I am acquainted in other portions of the county. I can't be positive that I have heard people in other portions of the county discuss the matter as to how they regard it. I may have done so, but don't remember now. I have never heard anybody anywhere say that it was not a trust.

210 Cross-examination:

I can't say that the matter has excited a great deal of attention in my neighborhood recently. I can't tell how many people I have heard discuss it within the last few weeks. I can't say that I heard any. At the time of the Bailey trial it was discussed often. I cannot be positive that there has been no discussion since that time. I cannot mention any persons I have heard speak of it as a trust. I don't recall any particular individual I have heard speak of it as a trust. I don't think I have heard anybody in my neighborhood say that the defendant cannot get a fair trial in this county. I don't think I have. I don't know that there is any such feeling in my neighborhood as would prevent them from getting a fair and impartial trial. I don't know how the people feel about it. So far as I know, the defendant could get a fair and impartial trial. I have heard them speak of it as a trust, and expressing their opinion. As to whether or not they could get a fair trial, being spoken of by them, I can't say. I have heard them speak of it this morning as a trust. I don't recall any instances where I heard any one in my neighborhood say anything about their not getting a fair and impartial trial. I can't say that in my judgment they can get a fair and impartial trial. I can't say that I know of anything to indicate that they could not get a fair and impartial trial in this county.

Redirect examination:

I understand that jurors are selected first by a Jury Commission. I understand that the parties to the case have the right to examine them with reference to *this* qualification; that each party to a civil case is entitled to six challenges, peremptory, without assigning any cause; that if a jury is not selected out of a regular panel,
211 then the sheriff is sent out to summon talesmen to complete the jury; that each party is entitled to have on the jury men who have no bias in their favor or prejudice against them. With the preliminary statements made to me that the word prejudice, as defined by our courts, means a prejudgment of a case or of the issues of a case; and that one of the issues in this case is as to whether or not the Waters Pierce Oil Company is a trust, taking into consideration the way juries are impaneled, and what the parties are entitled to, together with the statement I have made that the people have expressed themselves that it is a trust, I think it would be difficult to get a jury for this case, if the question of the Waters Pierce Oil Company's being a trust is involved as one of the issues. As to whether the people generally have prejudged this question as to its being a trust, I believe most of them in my community have the opinion that it is a trust. I say most of them; there is quite a number.

I believe my box voted anti-Bailey in the Primary election held about the first of January. The basis of the opposition to Senator Bailey was his connection with this oil business; I mean the Waters Pierce Oil Company matter.

Recross examination:

I don't know how many people vote at my box. I think there are from 150 to 200. I cannot indicate the number of persons I have heard speak of the Waters Pierce Oil Company as a trust. I can't say positively that I have heard ten. It is just the impression left on my mind. We have frequently talked it over at the mail box and other places, but I can't say definitely how many have spoken to me about it. I can't say whether it was more or less than
212 fifty. I could not call a single name.

I think the people in my community, or a majority of them, assume the Waters Pierce Oil Company is a trust; that is their opinion. I do not recall hearing any one suggest or say that he could not return an impartial verdict in this case. I do not think that in my conversation with these people, any one has undertaken to define what a trust is; they just speak of it in a general was as the Oil Trust, just as they speak of the Sugar Trust or Steel Trust, and without undertaking to pass on the specific facts in this matter. As to whether or not they regard the Waters Pierce Oil Company as operating in violation of law, they generally regard it as violating the law. They think any trust is in violation of law, especially the Oil Trust, because they do business with that. Hardly a week passes that they don't buy oil. They do not differentiate between a trust that violates the laws of Texas and a trust that violates the laws of some other State or of the United States.

Redirect examination:

The general impression with reference to any trust is that it is in violation of law. That is the impression and my recollection.

D. B. MATTHEWS, a witness for the defendant, being duly sworn, testified as follows:

I am living here in the city. I have lived in Travis County 47 years; I was born here. I am well acquainted in the eastern portion of the county, from here going down the river, through Hornsby and Webberville. I am somewhat acquainted through the Del Valle and Garfield communities. Among my associates the general sentiment is that the Waters Pierce Oil Co. is a trust and operating
213 in Texas in violation of law. Some of my associates are here in town and some are up and down the river, that is between here and Webberville. The general concensus of opinion is that is is a trust; they recognize it in their minds as being a trust. I do not believe I have ever heard any one express a contrary opinion. I have, in a general way, heard the matter discussed frequently.

I was in the county during the campaign preliminary to the primary election held about the first of January of this year, to instruct the Representatives from this county to vote for or against Mr. Bailey for United States Senator. Judging from the result of

the primary, the sentiment was against Mr. Bailey. So far as I know, the basis of the opposition against Mr. Bailey was that he had been instrumental in the re-admission of the Waters Pierce Oil Company into the State of Texas.

I have acted on Jury Commissions. Taking into consideration the way juries are selcted, that is, that a jury is primarily summoned by a jury commission; the men are selected for a week; that usually a number are excused, and others are disqualified; that the parties to the suit are entitled to examine them with reference to their bias or prejudice, one way or another; that the parties to a civil suit are entitled to six peremptory challenges each; and taking into consideration that prejudice within the meaning of the law means prejudgment of a case, or prejudgment of any of the material issues in a case—I say, taking all this into consideration, so far as my judgment is concerned, I think it would be a rather hard matter to get a jury that would give the Waters Pierce Oil Company a fair and impartial trial. I mean by that a jury that would not have prejudiced the case.

I have lived in Travis County 47 years, with the exception of two years, namely, 1891 and 1892. I cannot recall a single case
214 during my residence in Travis County, pending in the courts here, which had been the subject of as much general discussion as this case. I cannot recall any case that approached it with reference to the amount of general discussion.

Cross-examination:

I have talked to and heard the conversations of a few men living on the other side of the river. Where I heard the discussions was probably in public gatherings, and heard the matter discussed generally, and arrived at an opinion from what I heard the people say. I do not recall anything in particular.

I don't think that most of the people took much stock in the election held with reference to Mr. Bailey; at least, a good many people did not. I suppose the principal objection to Mr. Bailey was that many people considered him dishonest in his connection with the Waters Pierce Oil Company. I never heard any one say he was dishonest outside of that. It might have been that a good many of the laboring people voted against him because of his opposition to the eight-hour law; it might have been that a good man- voted against him in an ignorant way. I consider it a very hard task to get a jury. I would not like to consider it as an improbability to secure a jury. It would be probale that a court could get a jury out of the jurors of Travis County.

Redirect examination:

I could not say for certain whether I read in the Austin Statesman, about December 1st, an open letter addressed by Attorney General Davidson to Senator Bailey, beginning about as follows: "For more than six years the people of Texas have lived under the shadow of the wrongs perpetrated," etc.

215 ED. TAYLOR, a witness for the defendant, testified as follows:

I live near Webberville. I have lived in Travis County about thirty-nine years. I have lived from Austin down to Webberville, on this side of the river, that is, by way of Hornsby's Bend. I have lived half way between here and Webberville, and back at Webberville, and I am pretty well acquainted between Webberville and Austin.

I think I have heard within the last six months some discussions of this Waters Pierce case, or of the Waters Pierce Oil Company in connection with Senator's Bailey's race for the United States Senate. A good many people have the opinion that the Waters Pierce Oil Company is a trust. I don't know that I have ever heard any one express a contrary opinion. During the Bailey investigation I heard a good deal said about its operating in Texas in violation of law. I believe it was generally believed that the Waters Pierce Oil Company got back into Texas six years ago under false pretenses. I think that is the opinion of the people generally. I mean of the people between Austin and Webberville that I have heard express themselves. I have not heard people from other portions of the county express themselves. I hardly ever cross the river, and from here to Webberville is about the only portion of the county in which I have discussed the matter. I have no interest whatever in this case.

Cross-examination:

As to whether or not the defendant could get a fair trial in this county ,would depend a good deal on the jury. There are plenty of men in the county that could try the case fairly, if you got the right men. And there are a good many that wouldn't. It would
216 be a hard matter to get a jury where there is such a great prejudice. I think there is a very strong prejudice against the Waters Pierce Oil Company. I don't pretend to say there are not plenty of honest men in the county that wouldn't try any case fairly, but I must say there is a very strong prejudice in the county against the Waters Pierce Oil Company.

I can't say how many of the six thousand jurors in the County I have talked with about this matter. I am right smart of a politician when I get out. I was a Bailey man and consequently I had a good deal to say about it in Austin and down the river, and I have heard a good many expressions. I couldn't begin to say how many people I talked to about it. I couldn't say whether or not it was a hundred. For a good while it was a general talk here. While the Bailey investigation was going on, there was a great deal said by different parties. I could recall a good many parties with whom I talked. I heard several at Webberville who voted for Mr. Bailey because they thought Mr. Bailey was the candidate of the Democratic party, and had been endorsed by the convention. I don't know that I could recall very many names. I don't care to mention any names. I could give the defendant a fair trial myself. The prejudice which exists is not with the Bailey people as much as with the

anti-Bailey people. The Bailey people are freer from prejudice than the other side. I could fairly try the case, and I could select twelve men I could try this case or any other case with. Even among those I have heard express themselves, I could find twelve men who could fairly try this case.

VICTOR ANDERSON, a witness for the defendant, being duly sworn, testified as follows:

Direct examination:

I live in Manor; I have lived there twenty-six years. I am engaged in farming. I live a little piece from Manor, about
217 two miles, and during the past six months I have been in Manor almost every week. I live northwest of Manor. Occasionally I have heard the people in my community discuss this Waters Pierce Oil Case and Mr. Bailey's connection with it, but not much. Occasionally some of the people expressed themselves as believing the Waters Pierce Oil Company is a trust, but not that it is violating the law. I understand a trust to be a combination in violation of law, but I never heard the people in my section use that expression. They just refer to it as a trust. I have never heard any one say it is not a trust.

Cross-examination:

I should think the defendant could get a fair and impartial trial in this county.

Redirect examination:

I cannot tell how the people think about this matter in any other community than my own. I believe they are a trust. I couldn't tell whether a fair and impartial trial would mean a conviction of them, until I heard the evidence. There is very little said about this matter among the Swedish people. They don't think much of Mr. Bailey himself. I have no particular reason for opposing Mr. Bailey. I expect the reason for opposing him is because they charge him with working for the Waters Pierce Oil Company.

J. W. RUTLEDGE, a witness for the defendant, being duly sworn, testified as follows:

Direct examination:

I live in Hyde Park. I have lived in Travis County for forty years. I am best acquainted in the western, northwestern
218 part of the county. I lived in that portion of the county before coming to Austin. I have been living in the city about fifteen years. Within the last six months I have heard discussions of the Waters Pierce Oil Company with reference to this case and to Senator Bailey's race for the United States Senate. I have heard expressions of opinion among the people of this county with reference to the Waters Pierce Oil Company's being a trust. I think it is generally understood with most every one that it is a trust. I have

never heard any one deny it. I see people from all over the county; in fact, I see them from all over the State. I have heard people in the city express that opinion; also people from the Northwestern portion of the county, as well as from the Southern portion. My business is that of running a woodyard, and I also have a hotel at the Insane Asylum, that is, at Hyde Park. The people who stay at my hotel are mostly those Pasteur patients from all over the State; some country people, but mostly people from all over the State. At my woodyard I see people from all over the county; I am in town every day. From what I have read in the papers, I suppose the Waters Pierce Oil Company is a trust. Other people seem to think the same thing.

I know how juries are impaneled. I have served on juries, but never on a jury commission. Having in mind the way juries are impaneled, namely, that a jury commission is appointed by the Court to select so many jurors for each week, and is instructed with reference to the qualifications, and is directed to secure jurors scattered all over the county, thirty-six for each week of the term, out of which number a few are usually excused and some disqualify themselves; also that each party to a case has six challenges; and having in mind that if a jury is not selected from this panel of thirty-six men that is originally summoned, that the sheriff
219 is sent out to summon additional talesmen; and that each party to the case is entitled to a jury that has no bias in favor of or prejudice against either side; and that the word prejudice as used in this connection means to prejudge the case or the merits of the case or any issue in the case, I say, having all this in mind, I do not believe I would want to be tried by a jury in this county if I were the Waters Pierce Oil Company. My reason for saying this is because it is generally supposed they are guilty with what they are charged, and I would not want to be tried by a jury that believed I was guilty before I went into the trial.

Cross-examination:

I do not know whether or not the Waters Pierce Oil Company is guilty, and therefore cannot say whether or not I would want to be tried at all, if I were they. I have spoken of it as a trust, but if I were taken on the jury I would pay attention to the evidence and bring in a verdict in accordance with the facts, notwithstanding the fact that from what I have heard and read my present notion is that it is a trust. This is the state of mind of most of the people, that is, they believe it is a trust. It would take better evidence to convince me and the people generally of the fact that they are not a trust, than if it were just brought up and I didn't know anything about them.

I would decide the case according to the evidence. None of the persons with whom I have talked and with reference to whom I have been testifying, has made a statement to me that they would not decide the case in accordance with the evidence. So far as I know, I couldn't say that every person I know would not decide this case according to the evidence. So far as I know, they would decide it according to the evidence.

220 Redirect examination:

If you connect Senator Bailey with this case, there is no case whatever in my recollection which has during my residence in Travis County been pending in the courts here, about which there has been as much general discussion as about this case. The opposition to Senator Bailey arose simply on account of his re-establishing the Waters Pierce Oil Company in the State of Texas to do business. This is what the people believe generally.

Recross examination:

That was not the only charge against Senator Bailey, but it was the main charge; the one everybody harped on. I am not able to say that a good many laboring people were opposed to Senator Bailey on account of his attitude against labor. There were lots of charges against him. I have seen lots of them. The charge I heard most discussed was the Waters Pierce Oil Company matter. That was what they used generally as argument against Bailey, that is, his connection with the Waters Pierce Oil Company.

W. K. BECKETT, a witness for the defendant, testified as follows:

My name is W. K. Beckett. I reside over across here about four or five miles, in Travis County. I have lived here nearly forty years. My acquaintance in Travis County is about like that of any other farmer; only I am close to town. I come to town pretty often. In my visits to town I occasionally meet people from various parts of Travis County. I know people all over the county pretty
221 well. I don't know that within the last six months I have heard the Waters Pierce Oil Company particularly discussed. We hear it talked about We, as just used by me, of course, includes myself. I could scarcely approximate to what extent I have heard the Waters Pierce Oil Company discussed within the last few months. I should say a small number on that subject. I could not say how many, but not a great many. I heard discussions of Senate- Bailey during the contest in this county just antecedent to the primaries. I read some of his speeches, but I do not remember my hearing him discussed. I was anti-Bailey and talked about the matter occasionally. I think the people generally look upon the Waters Pierce Oil Company as a trust. As to whether it was a lawful or unlawful trust, I will say that it was expelled or whatever you call it, and then re-introduced; when it was re-introduced in the State I don't know whether it would be lawful or not. I think I would regard it as unlawful when it was expelled. There was considerable discussion as to Senator Bailey's connection or instrumentality in the re-admission into the State. The attitude of the people was that he was instrumental in re-introducing the Waters Pierce Oil Company into Texas. We have regarded it as coming back into the State under false pretenses, a false affidavit having been made to get it back into the State. Senator Bailey has been connected with that matter in the discussions had, and to my mind it was discussed a good deal. The opinion prevailed that the Waters Pierce Oil Company got back into Texas under false pretenses.

Cross examination:

I am of the opinion that the Waters Pierce Oil Company could get a fair trial in this county.

222 DAVE BECKETT, a witness for the defendant, being duly sworn, testified as follows:

I live out about eight miles northwest of town. My voting box is Oak Hill. I voted there at the last primary election when Senator Bailey was being voted on. I don't remember the vote at that box. I remember he got one vote. The basis of the opposition to Senator Bailey in that box was his general rascality and his being connected with the Waters Pierce Oil Company. A majority of the people in that section of the county with whom I have talked about the matter, express themselves as regarding the Waters Pierce Oil Company as a trust. I do not know what the one man who voted for Bailey thought about it. I do not think he was ostrasized. I think we let him live. A majority of the people regard as a fraud the re-admission that happened about six years ago, when Mr. Pierce made the affidavit. I have heard a few people from other sections of the State express themselves in regard to the Waters Pierce Oil Company, and they think it is a trust. I do not believe I ever heard any many express a contrary opinion. I didn't ask that Bailey man as to whether or not he thought it was a trust. I didn't know who it was that voted for Bailey in that box.

Cross-examination:

Perhaps the Waters Oil Company could get a fair trial in this county, but it would be a little hard to get a jury. As to whether or not I could serve on the jury, I will say that they would have to bring right smart evidence. I have made up my mind and a good deal of evidence would have to be there to change it. I have never served on a jury, and don't know exactly what constitutes the duties of a juror. It is probable that my judgment of the conditions in the whole country *are* based on my box,
223 but I am not sure as to this. In saying that I would find difficulty in giving the defendant a fair trial, I don't mean that I would not try to decide the case according to the evidence, because I would; but it would take a great deal of evidence to convince me. I do not say that I know the state of mind outside of my own box. My box is rather a small box, having something like eighteen or twenty votes. I was rather an unusually strong anti-Bailey man, and took a big interest in the election.

Redirect examination:

As to my sympathies in this case, with regard to being for or against the Waters Pierce Oil Company, are that I believe them guilty. I rather think it would be hard to get a jury from my neighborhood who could fairly try this case. A majority have expressed themselves as its being a trust. Some of them express themselves rather violently in regard to this matter.

R. L. PATTON, a witness for the defendant, being duly sworn, testified as follows:

I live at Oak Hill. I was mighty near raised there; have been there thirty odd years. Within the last six months I have heard some little talk among the people of my community with reference to the Waters Pierce Oil Company, and its being engaged in business in violation of the laws of Texas. All that talk about it say it is a trust, and is in business in violation of law. I did not vote in the last primary election. I think there were nineteen votes polled there in the Bailey election. I consider that the Waters Pierce Oil Company is a trust. That is my opinion, of course. I am pretty well acquainted all over the county. I have not been around Manchaca, and therefore have not heard any expres-
224 sions from the people in that neighborhood. I have heard people between Oak Hill and Austin express themselves, as I met them coming to town, and they were all of the opinion that it is a trust. I have never heard any one express a contrary opinion.

Cross-examination:

If I were on the jury and should take the oath according to law, I could give the defendant a fair trial and decide the case on the law and evidence. I suppose a fair trial could be had in this county.

Redirect examination:

If I were on the jury I doubt if I could give the same degree of credence to the testimony of Mr. Pearce and other witnesses for the defendant, as I would give to others. What I meant was that I would try to give them a fair trial, but I would probably find some difficulty in weighing their testimony the same as I would weigh the testimony of other witnesses; it is just like always when a man has his mind made up, that is, it takes more evidence than otherwise. I would want them to prove themselves innocent.

Recross-examination:

I could go and qualify as a juror and decide the case according to the evidence, and if they proved themselves not a trust, I could give such a verdict. If there were no evidence of a trust, my verdict would be to that effect.

JAKE SMITH, a witness for the defendant, being duly sworn, testified as follows:

I live at Del Valle. I am Justice of the Peace of that precinct. I am pretty well acquainted in the city; through to Del
225 Valle and on the south side of the river. It seems to me that until the Prohibition election came up, all I heard in the way of discussions among my people was this case and Senator Bailey's connection with the Waters Pierce Oil Company. I mean by that that I have heard many expressions with reference to the matter. It was very generally talked about. It seems to me that they all believe the Waters Pierce Oil Company is a trust; all that I heard express an opinion, thought so. I have heard these dis-

cussions in Austin, at Del Valle, and other portions of the county, including Creedmoor, Elroy and Garfield. I have never heard a single person express a contrary opinion. I believe that the Bailey people themselves, that is a majority of them, believe that the re-admission into Texas of the Waters Pierce Oil Company after its expulsion in 1900, was fraudulent. While they side with Bailey, they believe that the Waters Pierce Oil Company was a trust, and that it was so generally considered. I think the people all believed that Bailey re-instated the Waters Pierce Oil Company. I could not say as to whether or not they believed Bailey had been imposed on by the Waters Pierce Oil Company at the time they got back into Texas. I know how juries are impaneled in a case; and having in mind the preliminary statement that each party to a case is entitled to a jury of unprejudiced men, that is, men who have not prejudged the case, and go into the box and decide the case according to law and the testimony introduced, I say, having all this in mind, I doubt if it would be possible to secure a jury of fair and impartial and unprejudiced men in this county to try this case, that is from among the people that have read and kept up with this matter. From among the people I have heard express themselves, I do not think such a jury could be secured.

If I remember right, the vote in my box was in favor of Senator Bailey. My idea as to the basis of the opposition of those
226 who were against Senator Bailey was the same as that I have stated before, namely, that he re-instated the Waters Pierce Oil Company here, and that it is a trust.

Cross-examination:

I have not talked to all the people in my precinct. I don't think I could point to a single man that has taken some interest in the matter. I couldn't tell you how many votes were cast either at Del Valle or in my precinct. I know the vote was more than twenty-five; it was as many as forty. I could not give the Waters Pierce Oil Company a fair trial, for the reason that I believe it is a trust. As to whether or not I would decide the case according to the evidence brought before me, I have to say that I would be biased; I don't think I would be a good juryman. I have tried to keep up with everything connected with the case since the investigation started, but I have read a good deal about the Waters Pierce Oil Company. I have heard none of the evidence in this case. If the proper people were to testify that it is not a trust, I might change my mind, but it would have to be people I knew something about. I could not name all the people I have heard state that the Waters Pierce Oil Company is a trust. I might be able to name a few. I do not know that I could name two hundred in my box. I believe I can point out a couple of men right here in the court room that said they believe it is a trust. They didn't say they couldn't give them a fair trial but said they would like to send *him* to the penitentiary. I could not say how many other people I have heard say that, and would not attempt to name them; but I have heard a great many hard expressions about the Waters Pierce Oil Company. I

could name others beside the two here in the court room, who
227 said the Waters Pierce Oil Company is a trust, but not that they couldn't give them a fair trial. I think we have just as honest men in my precinct as there are any where else in Travis County, but from what I have heard among my people, they would be biased, because they believe it is a trust; I- is my opinion that they couldn't qualify as jurors.

T. J. ROWZEE, a witness for the defendant, being duly sworn, testified as follows:

I live at Sprinkle; have lived there about thirty years. I am pretty well acquainted in that community, and also know quite a number of people in Austin. I have a general acquaintance scattered around all over the county. I have not heard discussions to any extent within the last six months with reference to the merits of this case, that is, as to whether or not the Waters Pierce Oil Company should be convicted in this case. I have heard discussions with reference to whether or not the Waters Pierce Oil Company was fraudulently admitted to do business in Texas. These discussions I have heard generally around the stores and at gatherings of different people. I have heard the matter discussed at Sprinkle and at Austin. I have been to Manor, but I don't reme-ber whether I heard it discussed there. I have not heard a great many people discuss this matter—more of them while the Bailey Investigation was going on. It was discussed most particularly during December, January and February last—I have not heard much lately. Those who discussed that question believed it was a trust. I don't think I heard a single man express himself otherwise. By trust, I mean an unlawful combination. The matter of the re-admission of the Waters Pierce Oil Company was discussed in connection with Senator Bailey,—the two matters were always discussed together. The
228 people believed the re-admission of the company into Texas was a fraud. As to that being the unanimous sentiment of those I heard discuss the matter, I will say that I never heard anybody express themselves otherwise. That is what I believed about it myself. I know how jurors are summoned, and know how a jury is impaneled, and taking those facts into consideration and having in mind the further facts that each party to a case is entitled on the trial to a jury of impartial men, a jury who are not prejudiced against, him, that is, a jury, who have not prejudged his case or its case, or any of the issues in it, I say, considering all these matters, I do not believe that a fair and impartial trial could be had in this county. I might be mistaken in that. It is a hard matter to answer just that question, because a man's knowledge of those things is limited, but that is my opinion. I believe if a vote were taken, nine-tenths would vote them guilty. Now that is what I think about it from the general conversations heard over the county.

Cross-examination:

I don't believe I have read any of the evidence which shows that the Waters Pierce Oil Company is a trust. It seems to be an ad-

mitted fact that it is a trust. The people discuss it just as if it were a fact. If I would be taken on the jury in this case and the evidence failed to show that it is a trust, I don't think I would hold it to be a trust. I am not sure that I could decide the case without being influenced by preconceived notions I have. I might be able to do so, but I would not make a really good juror. I would not want to be put to a test in this matter. I would prefer not to have the matter placed upon me. I have never seen any testimony to the effect that the Waters Pierce Oil Company is a trust; it is just an admitted fact; something assumed to be true. If I were
229 taken as a juror and the evidence failed to show that it is a trust, I think I could say so by my verdict. I don't think I have heard anybody say they would not decide the question according to the law and the evidence. I can't say that everybody is like I am on the matter. I think it is, in a general way, a mere admission that the thing is true. The Bailey matter has a good deal to do with the matter in this County. I do not think there would be so much prejudice if the Bailey matter were eliminated. Even if the Bailey matter should be eliminated from this case, I don't believe a fair trial could be had. I don't believe you could change the people at all, because I base my judgment on the Investigation. The Investigation never has changed a single mind in this County. I think the anti-Bailey people are still anti-Bailey. I don't know whether or not the question of this company's being a trust was brought up in the Investigation. As to what I have heard about the people having made up their minds, I will say that I haven't heard but very little. I think we have something like sixty voters in our box. I don't think more than fifteen or twenty per cent. of the people up there voted on this issue. The balance didn't go to the polls or didn't know there was an election. They thought the calling of the election was a farce. I don't think the matter was discussed with reference to this company being a trust. I couldn't say how many of the people in my voting box I have heard state this company is a trust. I think I have heard as many express such an opinion as voted in the election. They were gather- around the store, and I never charged my memory. I would not undertake to name any I have heard give an expression to this matter. I couldn't take up any particular individual, because I never thought of it as ever being wanted in this way. I could not take up a single man who said he ...ld not qualify as a jury, but of the sixty men at
230 my box, ...me are not qualified jurors. There may be forty there. Out of that forty I couldn't name any who said they couldn't qualify as jurors, because I never heard them express themselves on that question. I would not undertake to say that I think they could qualify, and I am not in a position to say that any of them are disqualified.

E. D. CAMPBELL, a witness for the defendant, being duly sworn, testified as follows:

My name is E. D. Campbell. I live at Hornsby's Bend. I have lived there about thirty-eight or forty years. I am well acquainted around Hornsby's Bend, Webberville and up the river to Austin.

During the last few months, particularly December, January, and February I have heard discussions among the people of my community with reference to this case. I have heard expressions that the Waters Pierce Oil Company is guilty, that is, is operating in Texas in violation of law. I couldn't say to what extent I have heard people in my community express themselves in this matter; I have heard a few. I don't know that I have heard it discussed at Webberville. Here in Austin I have heard it discussed. At Hornsby's Bend I think a majority of the people think the Waters Pierce Oil Company is a trust.

Cross-examination:

I think the Waters Pierce Oil Company could get a fair trial in Travis County.

J. A. McWILLIAMS, a witness for the defendant, being duly sworn, testified as follows:

I live at Sprinkle; have lived there about seven years. I am engaged in merchandising and farming. I keep a general store. I have been engaged in the store something like twelve or four-
231 teen months. During the last three or four months I have heard discussions with reference to the Waters Pierce Oil Company in connection with the Bailey matters, and the readmission of the company into Texas, but I haven't heard any opinions. I have never heard any opinion as to whether it is guilty or innocent.

Cross-examination:

I have heard nothing there to indicate that the Waters Pierce Oil Company could not secure a fair trial in this county.

J. A. HEWETT, a witness for the defendant, being duly sworn, testified as follows:

My name is J. A. Hewett. I live at Manchaca; have lived there about twenty years. I am tolerably well acquainted in that community, and also in Austin. I can't say that I am well acquainted at Oak Hill. During the last three or four months I have to some extent heard this Waters Pierce suit discussed. It is generally believed to be a combination, that is, that the Waters Pierce Oil Company and the Standard Oil Company are one and the same. I don't know to what extent I have heard this matter discussed. I can't say that I have heard it discussed sufficiently to be able to say what the general opinion in my community is with reference to it. A majority of those I have heard discuss the matter, believe the Waters Pierce Oil Company is a trust. I hardly know what the people believe with reference to its re-admission or admission into Texas the last time. I will state that I have had a great deal of sickness in my family and some deaths, and I have paid little attention to the matter.

I believe I have have heard one or two probably, who thought the Waters Pierce Oil Company is not a trust.

Our box went anti-Bailey in the primary election. I do
232 not know what was the basis of the opposition to Senator Bailey among those who opposed him.

Cross-examination:

I should think the Waters Pierce Oil Company could get a fair trial in this county. I would hate to think we didn't have men enough in Travis County to give them a fair trial, but I don't know anything about that. I don't know whether or not almost a jury could be secured at Manchaca to give the defendant a fair trial; the box went against Bailey; by what vote I don't remember, but I think it was tolerably close. I can't say that half a dozen men could be secured at that box that would make good jurors in this case. I might think I could give them a fair trial, but the other side might not think so. I don't know about that; I am like the nigger,—"if a man bites me, I will bite him." I don't believe I have heard anything to indicate that the defendant could not get a fair and impartial trial in this county.

Redirect examination:

I have heard the matter discussed only in my community; that's all. I am doubtful if a full jury could be secured in that community. I don't think it could.

Recross examination:

I don't know that you could get half a jury in my precinct. I will say that there are a good many antis there, and if I were on trial myself I wouldn't want a man on the jury that had the least thing against me. There are quite a number of Bailey men there, too, I was one myself. The question as to how many men could be gotten at Manchaca that would be fair and impartial
233 jurors in this case, is an unfair question. I don't know how many.

Redirect examination:

As to getting any jurors from Manchaca who had not formed an opinion in regard to the merits of this case, I will say that two or three might be gotten.

W. H. PRICE, a witness for the defendant, being duly sworn, testified as follows:

My name is W. H. Price. I live out between Creedmoor and Carl; have lived there between thirty-five and thirty-seven years. I believe I am generally acquainted in that community. I have heard some discussions within the last three or four months in regard to the Waters Pierce Oil Company. I can't say that I have heard the matter discussed enough to know what the general opinion in that community is. I haven't heard it discussed very much; I have been out but very little. The opinion expressed is that they believe it is a trust, and is wrong and in violation of law.

Cross-examination:

I have not heard anything to indicate that the defendant could not get a fair and impartial trial in this county. I think it could get a fair trial.

Redirect examination:

I do not know anything about the sentiment, except in my own community. I have not heard any one express any other opinion except that it is a trust and operating in violation of law. As to my being in a position to say whether or not they could get a fair trial, it is my opinion that they could; but I don't know the sentiment in other communities.

234 ERNEST PFLUGER, a witness for the defendant, being duly sworn, testified as follows:

I live at Pflugerville. I was born in that neighborhood. I am forty-six years old. At the time of the Bailey election there was right smart talk about the connection of the Waters Pierce Oil Company and Senator Bailey. I think that was about the first of January. I think my box went anti-Bailey by two majority. Among the people I heard express themselves as being against Senator Bailey, the reason assigned was his connection with this oil business, this trust business. I mean the Standard Oil Company or whatever it is called. Some call it the Standard Oil and others the Waters Pierce. The people in my community talked like it is a trust, but I am not convinced that it is a trust. I don't know exactly what a trust is. I never heard anybody say it is not a trust. I think it is violating the trust law. I couldn't speak for the majority, and don't know how they think about that. I never heard anybody say it was not a trust.

Cross-examination:

I have not heard anything to indicate that the defendant could not get a fair trial in this county. I think it could get a fair trial. We have about 160 poll tax receipts at our box. I don't know how many took part in that election. I believe there were 32 votes cast. 32 votes out of 160.

F. G. REYNOLDS, a witness for the defendant, being duly sworn, testified as follows:

I live three miles east of Austin. I have lived there for twenty-five years. I am engaged in the business of market gard-ner. I am tolerably well acquainted in the Govalle community and have quite an extensive acquaintance in Austin. During the last three
235 or four months I have heard this case and the Waters Pierce Oil Company discussed. At the time of the Investigation in the Legislature there was considerable discussion in our neighborhood; that was during January and February. There was some expression in my community to the effect that the Waters Pierce Oil Company is operating in Texas in violation of law. That was the general opinion in my neighborhood. I have not heard it discussed

much lately. In February that is January and February, the discussion in Austin just about the same as out there, wherever the matter would come up. That's about all we had to talk about. The same opinion would be expressed here in Austin as out in my neighborhood. On the day of the election I believe I heard three men express a contrary opinion. Those were the only ones I heard express a contrary opinion.

Cross-examination:

Neither in my discussions at that time, nor since, have I heard anything to indicate that the defendant could not get a fair trial in this county. From what I have heard, it is my opinion that the defendant could get a fair trial here. The vote at my box this year is only sixty-five. I don't recollect the vote at my box, but I don't think more than 25% voted. I know the Bailey vote; only three men voted for Bailey. They were the three I spoke of a while ago as expressing the contrary opinion. So far as I know they have not changed their opinion on the subject.

Redirect examination:

I was anti-Bailey in the primary election. My reason for opposing him was on account of the fact I didn't think he
236 was honest. I believe that he was the cause of the Waters Pierce Oil Company coming back into Texas, which was a dishonest transaction. I think the Waters Pierce Oil Company is a trust at this time and was before. Even supposing that the rest of the county the sentiment is an unanimous as in my community, that the Waters Pierce Oil Company is a trust, I believe they could get a fair trial, for the reason that many men are indifferent; they don't read the papers; don't read the magazines; don't do anything, and the might be in a position to be qualified jurors. As to whether or not they are the men ordinarily selected for jury service, I think it is the custom to summon men indiscriminately, and you are liable to get them and liable not to get them. I don't know anything about whether or not a trial of the defendant would necessarily result in a conviction. Most of the people in Texas think so; particularly most of them in Travis County.

Gus Cezeaux, a witness for the defendant, being duly sworn, testified as follows:

I live at Cedar Valley. This last time I have lived there about four months. I lived there about twenty years and then I moved up on the river to Teck, and lived there five years, and moved back to Cedar Valley. I was Justice of the Peace up there, but didn't do anything but work for the people; there was no money in it. Cedar Valley is about sixteen miles from Teck. Within the last few months I have heard people in my community express themselves with reference to the Waters Pierce Oil Company, in regard to its being a trust and having been fraudulently admitted to do business in Texas after the old company was excluded. I have heard it discussed for six years; I was on the jury before that

convicted it, and I have heard it ever since. The general sentiment is to the effect that the Waters Pierce Oil Company is a trust.
237 That is the general opinion in my present neighborhood, and also at Teck. In the last few months I have also heard people from other portions of the county express themselves on this matter. People from all over the county, I mean. I have a pretty extensive acquaintance in the county. From those I have heard express themselves, the general opinion is that it is a trust, and that it is here in violation of law; that it has always violated the law; that it is the same old concern, only with another coat of paint on. I have not heard any public speeches on the subject. I got enough of that six years ago. They punched law points into us until I thought all of the jury was dead. Judge Clark and Mr. Johnson were here then and are here now. I have heard the people who are residents of Austin express the same opinion—that it is a trust. I won't say that I have heard a considerable number, but a good number. I have not heard them express themselves otherwise, but that it is a trust and should not have been re-admitted.

Cross-examination:

I could not decide this case on the evidence; I wouldn't qualify as a jury. I couldn't even if I hadn't been on the former jury. If a man would come up and say they are thieves and rascals and ought to be run out, I don't think he could qualify as a juror. I have heard a great many make that kind of a remark. Have heard it for five or six years; ever since the other trial. These expressions not only cover an earlier period; I have heard such expressions recently. I couldn't give the names of the people I have heard speak of the matter here in town; but I heard Francis Fischer, and I heard Jake Schneider and Al Schneider talking about it. I heard that since this case was instituted they couldn't get gasoline
238 that would burn; that something was the matter. The man that minds the saw at the lumber company said the gasoline won't burn. Those people I have just named are not the only people I have heard express themselves. I have heard others, but I don't remember their names. I have not heard any say they couldn't qualify as jurors. The people I have heard talk about it constitute a very small number, compared to the six or seven thousand voters. I have, however, heard more than twenty or thirty. Three or four hundred people come up on the river fishing and I heard a good many talk. People from away down at Elgin and around. They express themselves pretty freely. I go around a good deal and take interest in politics. I haven't heard anybody suggest that they couldn't serve on the jury. I haven't spoken to anybody about that.

Redirect examination:

Not to be misunderstood, I will say that I have heard those discussions to a great extent within the last three or four months. I didn't go to our box on election day; I had enough of it. I know how a jury is impaneled; I have been on a jury and on a jury

commission. I know that a man is entitled to a jury of unprejudiced men; men who have not made up their minds in advance. As to whether or not a fair and impartial jury could be secured in this county, taking all these matters into consideration, I will say if you could pick out from all the men in the county you could; but where you take just a few each week, you could not. I do not think you could get a jury in the ordinary way.

239 Recross-examination:

They had an election in my community, but I didn't go. I live within two hundred yards, but didn't go. I think they had an election at Cedar Valley and at Teck. The people get disgusted about such things; politics are so dirty, they don't take any interest. I know that people who have the same kind of feeling about this matter that I have, would be disqualified and would be put off entirely, but you would have to get five or six thousand people in order to get a jury. I don't think you could get them out of what the court would allow. I have been here to-day, and I have heard some of the testimony. I have heard some of the people say they could be fair jurors. I know some of those men, and they are good men. As to whether or not they could tell the truth, that is a matter with their conscience. I believe ten or twelve men have already said that they could fairly and impartially try the case.

CALVIN HUGHES, a witness for defendant, being duly sworn, testified as follows:

I live out south of here about six miles; at St. Elmo. I have lived there about five months. Before that I lived at Creedmoor. I am pretty well acquainted in Travis County. I am very well acquainted in the southern part of the county. I am not very well acquainted in Austin. Within the last few months I have heard discussions with reference to the Waters Pierce Oil Company at Creedmoor, but not at St. Elmo. I think I have heard it sufficiently discussed to be able to state the general opinion of the people in that community with reference to the Waters Pierce Oil Company. Almost everybody thinks it is a trust and was fraudulently admitted into the State. That is the sentiment around Creedmoor. Creedmoor is about sixteen miles south of here.

240 Cross-examination:

Judging from my own opinion and from what I have heard, I do not think the defendant could get a fair trial. I have not seen any evidence against the Waters Pierce Oil Company. The information I have is the result of general talk and newspaper reports and articles. I don't think I could qualify as a juror and fairly and impartially try the case. I don't think I could hear the evidence on the defense's side sufficiently fairly to make a juror. I have never heard anybody express himself to the extent of being able to lay aside any prejudice he had and decide the matter on the evidence introduced. All the people I have talked to are of the opinion that it is a trust, without knowing what the evidence is

against the company. As to whether or not a jury could be secured from the Creedmoor community, I will say I think not; if I were in the other man's place I wouldn't want to risk it. I have heard men at Creedmoor say they should be sent to Huntsville. I know it is a corporation that is being tried, and nobody can be put into the penitentiary in connection with this case, but these remarks have been made against Pierce. It might be that there are people in the Creedmoor community who really don't know anything about this case and haven't discussed it. I haven't talked with all of them. I have discussed it with more than ten, as far as that is concerned. A good many people didn't go to vote. Something like fifty per cent. didn't vote. I don't know the voting strength of the box there since the Terrell Election Law has gone into effect. I suppose there are a hundred qualified voters out there, but not over that. I don't know about there being any qualified to sit as jurors over and above those who are qualified to vote. I don't know that it is a fact that less then twenty-five per cent. took interest enough to come to the polls and vote. I don't know that a number
241 indicated by their vote that they had not prejudice; all I heard discuss the matter were prejudiced. The box went for Bailey; I am a strong Bailey man, but I am prejudiced against the Waters Pierce Oil Company. I couldn't give them a fair and impartial trial, and was as strong a Bailey man as anybody. From the way I heard some men talk I don't think they could make good jurors. I don't want to call any names, but there are a great many around there who have expressed themselves as strongly as I have. I have heard as many as ten persons express themselves in that way. I have heard more than that. I was around the store and we hurrahed about going in-to the Republican party. It was something like half the voters that participated. The other half I don't know about; don't know how they felt or what sort of jurors they would make in this case.

Redirect examination:

With reference to the question of evidence, I will say I read only a part of the evidence adduced in the investigation here in Austin, as reported in the newspapers. I think it was read a good deal in the community around Creedmoor. I don't recollect reading anything in the papers about valuable evidence secured by Mr. Lightfoot in New York and up there. I read something purporting to come from Attorney General Davidson, denunciatory of the Waters Pierce Oil Company, but I don't recollect; the papers were full. I just read it and passed it on by. The people generally believe the Waters Pierce Oil Company is a trust, yes, sir. Some of the Bailey men, as well as the anti-Bailey men believe that: I, for one, do, and there are others beside me. The denunciation of the Waters Pierce Oil Company was not confined to the anti-Bailey men, but was indulged in by both; they were pretty much mixed
242 up. I had never heard any argument to the effect that Mr. Pierce had taken advantage of Mr. Bailey, and secured his assistance by misrepresentation.

GEORGE E. EKLUND, a witness for the defendant, being duly sworn, testified as follows:

I live at Montopolis, and am engaged there in the ginning business. I am of the Swedish nationality. I have lived at Montopolis for eight years. Within the last three or four months I have to some extent heard the people in my neighborhood discuss the Waters Pierce case and Senator's Bailey's connection with the Waters Pierce Oil Company, but I have not heard it sufficiently discussed to be able to state what the opinion of the people generally is with reference to this matter. Those that I have heard express an opinion, believe it is acting in violation of law. I have also heard some people here in town discuss the matter, and they seem to be of about the same opinion. I have never heard anybody express a contrary opinion. Montopolis is about three miles east of here.

Cross-examination:

I have not heard anybody express himself to the effect that the defendant could not get a fair trial in this county. I have heard nothing that would lead me to believe the defendant could not get a fair trial, except that those who took a great deal of interest would be prejudiced to some extent. A good many people haven't taken any interest; in fact, a very limited number, compared with all I come in contact with. I am of Swedish extraction, and in talking with people of — nationality, I have heard only one that said he could give the Waters Pierce Oil Company a fair trial in this
243 case. There are something like 1500 Swedish people in the county, that is, 1500 poll tax receipts have been issued to Swedish people. I do not come in contact very much with the Swedes, as only a few live in my neighborhood. The greater portion of the Swedes live out around Manor. I don't remember hearing such an expression from any other nationality. I wouldn't care to say, from what I know, whether or not the defendant could get a fair trial. I only know as regards myself.

J. W. PEYTON, a witness for the defendant, being duly sworn, testified as follows:

My name is J. W. Peyton. I live eight miles north of town. My voting box is Summit. I have lived there about thirty years. Am engaged in the business of farming.

Within the last three or four months I have heard some little discussion of the Waters Pierce Oil Company, in my community, both in connection with the Bailey matter and aside from it. We held the primary election at Summit, but I don't remember how many votes were polled. I voted in that election, and voted against Senator Bailey. Our box voted against Senator Bailey, but I do not remember to what extent. The basis of the objection to Senator Bailey, in my community, was because the people thought that he was in with this Waters Pierce Oil Company. The objection to the Waters Pierce Oil Company was because they consider that it is a trust. I couldn't say that I have heard enough expressions in my community to now what is the general concensus of opinion as to

whether or not the Waters Pierce Oil Company is a trust. I myself think it is a trust. Those that I have heard express themselves think it is a trust, but I have heard only a few express themselves. I have never heard anybody express a contrary opinion I have heard the matter discussed several times here in Austin, in passing up and down the street. The majority of these also thought it was a trust.

244 Cross-examination:

I have not heard anything up there to indicate that the defendant couldn't get a fair trial in this county. I should think the defendant could get a fair trial in this county; I don't see why it shouldn't.

Redirect examination:

I think there are enough people who could set aside this prejudice in regard to the Waters Pierce Oil Company being a trust, to give them a fair trial. There are a great many people who do not read and do not know about the matter, and therefore, are probably not prejudiced against the company. Whether or not they are the kind of people that are put on juries, but you get them once in a while.

LEON PUCKETT, a witness for the defendant, being duly sworn, testified as follows:

Direct examination:

My name is Leon Puckett. I live down at Hornsby's Bend. I have lived there about thirty-two years; I was raised there. I have heard some duscussion of the Waters Pierce Oil Company in Hornsby's Bend during the last few months. The discussion was in connection with the Bailey Investigation. Well, in the general opinion of the people in that community, it is a trust. I have heard opinion expressed while here in Austin, by people from other portions of the county. I come to Austin most the times once a week. The people I have heard here in Austin seem to think it is a trust.

Cross-examination:

I have not heard anything to indicate that the defendant
245 could not get a fair trial in this county. From what I have heard in my own precinct, as well as here in town, I believe the defendant could get a fair trial.

Redirect examination:

I understand that the defendant in this case is entitled to a jury of unprejudiced men. All we know is newspaper talk. Some of the people read the testimony in the Bailey Investigation, and some argued it; some didn't care about it at all. I hardly know whether the defendant could get a fair and impartial trial in this county, but I believe though you could get a jury.

I don't know of any other case that was as generally discussed as this one has been. None to which as many references have been made.

Recross examination:

I said I didn't recall any case as generally talked about as this one. Calling to mind the Warren Moore case, I suppose they talked more about it. The same is true about the Burt case tried here a few years ago. Most of the discussion of this case has been with reference to Mr. Bailey, and at the time they were trying him. I don't think there has been any general discussion of the facts of this case.

HAM METZ, a witness for the defendant, being duly sworn, testified as follows:

My name is H. M. Metz. I now live in the city, and have lived here for sixty-three years. I have held several official positions, the last being County Assessor of Travis County. I held that position twenty-two years. Among other official positions I have held, are Alderman, School Trustee, and various other little offices.
246 I was a member of the Grand Jury at the September Term, 1906, of the 53rd Judicial District. I was a member of the Grand Jury that returned an indictment against H. Clay Pierce, charging him with false swearing.

ELI MILLER, a witness for the defendant, being duly sworn, testified as follows:

My name is Eli Miller. I live at Creedmoor, in this county. Creedmoor is fifteen miles south of Austin. I have lived there about fourteen years. I know almost every one in the community; in fact, every one. Within the last few months I have not heard much discussion in my community about the Waters Pierce Oil Company; I might have heard it discussed some. I heard it discussed some during the Bailey campaign about the first of January, but not extensively. I heard it discussed as the Waters Pierce Oil Company being a trust. I heard only a few persons discuss it in that way; the people I heard speak of it, were representative citizens. From the way I heard the matter discussed, I judge that the Waters Pierce Oil Company was re-admitted into the State fraudulently. That was the opinion I heard discussed. I never heard any one say anything to the contrary. The expression was all one way. I have never know- a civil case in Travis County to excite as much attention as this case has.

Cross-examination:

I don't believe I have known of any criminal case to excite as much attention. In saying this, I am talking about the Bailey controversy and this case connected together. I couldn't say that whatever of interest there has been in reference to this matter has been in regard to Senator Bailey, rather than this defendant. I have not heard any discussion recently. I couldn't say positively

that it has been two months since this matter came up for
247 trial, but it has not been discussed since the Bailey controversy. From what I understood of the conversations at that time, the only discussion was with reference to Senator Bailey. I have never heard anybody discuss the facts of this case. I suppose any notion I may have about this defendant being a trust or people talking about its being a trust, was based on newspaper reports, etc. I can't say that I have ever heard the facts of this case discussed. I have never heard the issues involved in this case discussed, but I think I have heard what I supposed to be some of the facts in it. The facts from what I judge of the case is whether the Waters Pierce Oil Company was brought back into Texas through fraud, and through the efforts of Bailey, and whether Mr. H. C. Pierce perjured himself in his statement. Since the admission of the concern into the State in 1900, the charges I have heard in connection with it are the indictment by the Grand Jury. I know Mr. Pierce is not being tried in this case, but that the Waters Pierce Oil Company is. I know that the State in this case is asserting against the Waters Pierce Oil Company the violation by it of the anti-trust laws. I couldn't say just in what respect, but in several respects, I think. I have not read the petition in this case, and don't know anybody who has. I do not know the character of evidence that the case bears on, and do not know anybody who does. I can't say I have heard the facts of the case now on trial before the court discussed in my community. I think that any facts I might have heard were based simply on general rumors, newspaper reports, and that sort of thing. I do not think there was any showing of prejudice or feeling against the Waters Pierce Oil Company itself as distinguished from the action of Mr. Pierce or the position of
Mr. Bailey, in the discussions I have heard. I think I talked
248 to some three or four people about this matter. I hardly know whether or not, judging from my knowledge of the conditions as they exist in my community, the defendant could get a fair trial in this county. Of course, from what I gathered from those I talked to, I should think not. The three or four I talked to are of the same opinion I am. I do not think I would make a good juror in this case. I am a qualified juror. I have never read any of the evidence in this case, except what was in the papers. I am not always in the habit of relying on what I read in the newspapers. I do not think the newspapers have undertaken to give the evidence that is to be given in this case. I hardly think I could go into the jury box and say to the Court that I could decide the case on the evidence introduced before me. I have my mind made up. I hardly think I would be able to decide the case on the evidence introduced before me and the charge of the court. Two of the men I mentioned as having talked with, are the same as I am about this matter; they have expressed themselves as being prejudiced, and disqualified as jurors. I don't know about the other one or two; I heard no expressions from them. I did not go into as full a discussion with them about the matter as you have about the qualifications of a juror. Those two I have mentioned are Mr. Hughes,

who was on the stand here yesterday, and Mr. Evans. Those are the only people I know at Creedmoor who I have reason to believe are disqualified as jurors. There are one hundred and fifty voters in the Creedmoor box. I suppose there are several people in that box who have never heard of the Waters Pierce Oil Company, because there are lots of people that don't take newspapers, and I think therefore that there are more than two that have never heard of the Waters Pierce Oil Company.

249 Redirect examination:

I hardly think that people who never read newspapers get on juries often. The matter I heard discussed was with reference to Senator Bailey's connection with the Waters Pierce Oil Company after its expulsion from Texas, and its re-entry into Texas by fraud. The objection to the Waters Pierce Oil Company was the general opinion that it is a trust, and we had anti-trust laws; and he tried ta get back into the State the trust, and people look with holy horror upon trusts. In my opinion a man who has his mind made up about a case is not a fit juror. I have looked upon the Waters Pierce Oil Company as a trust ever since it has been here. Nobody seems to think anything else about it. When a general opinion prevails that way, a majority of the people would be of the same opinion.

Recross examination:

I have not just merely assumed that it is a trust, and have not assumed that everybody else thinks the same thing. I have heard it talked *af* a great deal and have heard people discussing it among themselves. To some extent I judge that notion is predicated on the fact that it was once convicted here as being a trust and run out of the State. I do not know of anything since that time which would be accepted as an indication that it was a trust. I guess my notion must be based upon this former action of the court here in holding it a trust. I think I would say the defendant is not a trust if I were on the jury and it was shown that the defendant on trial is a different concern from that which was adjudged to be a trust and if the evidence failed to show that since that time the defendant had done anything that would make it a trust. I could
250 not say that the opinions of the people I have talked with are predicated upon the fact that the Waters Pierce Oil Company was once adjudged to be a trust here in this county, and not upon something that has occurred since that time. I have formed no opinion based on facts that have arisen since the time that the Waters Pierce Oil Company was excluded from the State, and I have never heard any such facts discussed by the people I have talked to about this matter.

Redirect examination:

I think this is the same concern that was convicted here before, and that it has just played with the law and got back under false

pretenses. That is what I blame Bailey for. I can't say whether the people I have talked with are of the same opinion; I would judge so, however.

Recross-examination:

I have not heard discussed any facts arising since 1900, that would show that this is the same concern that was in here before. I know of no facts myself. I will say as I did before, that if the evidence were to show that this was not the same concern and should further fail to show that this concern had done nothing since 1900 to make it a trust, I could, if I were on the jury, be able to say that a case had not been made out against the Waters Pierce Oil Company.

Redirect examination:

I would go into the jury box prejudiced.

Recross-examination:

I would have a prejudice against the Waters Pierce Oil Company if I were to go into the jury box. I would go into the box with a prejudice against them, not a conclusion. I base my preju-
251 dice on several reasons; the judgment of the court in 1900 was one reason.

W. L. DODGEN, a witness for the defendant, being duly sworn, testified as follows:

My home is five miles north of town. My voting box is at Summit. I have lived at the present place about two years; and I have lived in Travis County about seventeen years. Prior to that I lived south of town. My acquaintance in the community in which I now live is not very great. I have only lived there a little over two years. I am acquainted with most of the people by sight. My occupation is that of farmer. I do not belong to any church or lodge out there. I am Superintendent of the County Farm of this County. I meet a good many people out there. I have heard some discussion of the Waters Pierce Oil Company within the last few months, that is to say, since the first of last January. There was considerable discussion about the Waters Pierce Oil Company about the time we held an election to say whether or not we should instruct our Representatives to vote for Bailey or not. The general opinion among the people, expressed by the people of my community during that time, was to the effect that the Waters Pierce Oil Company is a trust, and that it was re-admitted into the State by fraud. There is some prejudice in my community on account of this belief. I think there are some that would make good jurors in this case, but I believe the majority would be against the Waters Pierce Oil Company. They have not all made up their minds, but the majority are against the Waters Pierce Oil Company.

Cross-examination:

I think may be four, five or six jurors could be secured there; I couldn't say exactly. I do not know exactly how many
252 people vote at that box; I think forty or fifty. I think five or six good jurors could be secured from out there; that is my opinion. But a majority believe the Waters Pierce Oil Company is a trust; a majority are against the Waters Pierce Oil Company. It is my judgment that five or six qualified jurors could be secured from out there. I suppose there are some people out there who have never taken any interest in this matter; perhaps there are some that hardly know there is a Waters Pierce Oil Company. In my judgment, twelve good jurors could be secured in this county to try this case. It is my opinion that several hundred could be gotten. I have taken some interest in the matter myself, and I think I could qualify as a juror.

Redirect examination:

I am familiar with the method of summoning and impaneling a jury in this country. I think there would be some trouble to secure a jury, considering the method of securing a jury, and considering that every person is entitled to a fair jury. It might be possible that a good many people with a violent prejudice think they could qualify as jurors when in fact they can't. It is pretty hard, I think, for them to law aside their opinions.

GEO. S. WALTON, a witness for the defendant, being duly sworn, testified as follows:

I have resided in Travis County since the 12th of November, 1883, nearly twenty-four years. I have a pretty general acquaintance throughout the county—both in the city and outside the city. For quite a while I have heard hardly anything else but discussions of the Waters Pierce Oil Company among the people of this county. Judging from the expressions that I have heard all over the county, I think it is all but universally considered that the Waters
253 Pierce Oil Company is a trust and that it was fraudulently re-admitted into Texas; that is the general impression throughout the county, as far as I have heard. As to the Waters Pierce Oil Company's securing unprejudiced jurors in this county, from a pretty general talk among the citizenship as a body, that is, the intelligent citizenship, of Travis County, my idea is that the matter has been prejudged, and the people have made up their minds that the Company is guilty, and that it ought to have its permit to do business in Texas revoked, and that penalties ought also to be assessed. They disagree as to the amount of those penalties. I have heard some of them say they ought to stick them to the limit. I think a jury might be secured in this county, that is, a jury that would come in here and qualify; but I don't think that the class of men that would do that would be capable of analyzing and understanding a case of this magnitude. I am familiar with the method of organizing and selecting juries.

Cross-examination:

I was not one of Mr. Bailey's managers in the recent campaign. I took a great deal of interest in behalf of Senator Bailey. I think Senator Bailey is all right in every way. I never made any speeches for Mr. Bailey. My name was signed to some campaign documents and literature. I didn't sign it myself, but I acquiesced in the signing. Since the Bailey business is off, I still hear this case discussed nearly all the time. I have heard it frequently discussed within the last two months. I have never heard the facts of this case discussed in detail. Further than hearing simply an acquiescence, by the people with whom I have talked, in the idea that the Company is a trust—I have heard the testimony of Mr. Gruet and the various witnesses connected with the case, discussed
254 by quite a number of people. I don't know to what extent they are familiar with it, but they pretend to be quite cognizant of quite a number of things. They talked about the contract between the State and Mr. Gruet, and they have talked about the new law that was passed by the Legislature, authorizing the State to get this testimony, and I have heard it discussed from every standpoint. In regard to indicating some of the matters I have heard discussed which have a bearing on the issues in this case, I will say that I have heard them say that the affidavit of Mr. Pearce, to the effect that the Standard Oil Company, I mean the Waters Pierce Oil Company, is not a part of the trust, was perjury, and they discussed about the number of shares that the Standard Oil Company owned in this company from the time of its inception down to the present day, and they discussed it largely with Mr. Bailey's connection with the matter. Bailey's connection with this matter was very largely discussed. I can't say that I can say positively that any particular man has discussed this matter with me; it has been discussed in my presence, and in that way I have heard Mr. John W. Brady, Mr. Henry Faulk, Judge Cochran, Judge Penn, Ed Anderson, Mr. Haigler, and Mr. Batts discuss it; I have also heard parties from the Attorney General's Department discussing it. I have heard Ben Marshall; Major Walton, Gregg Hill, Mr. Luedeck, at Manor; Mr. Taylor, at Webberville; Mr. George Gilbert; Mr. Francis. I could name a great many, but the names have slipped me right now. Those people are not the only ones I have discussed this matter with, and I do not predicate my statements upon the discussions I have had with them. I made a political campaign in this county, in my race for Representative in the Legislature, and I have talked with people all over this county, from one end to the other. I made that campaign last summer, before
255 the institution of this suit, but it was generally understood around and talked about, and Mr. Bailey's connection with it was discussed even at that time. I heard it frequently mentioned then, and since that time they had a political campaign in this county, involving the instruction of the members of the Legislature from this county to vote for or against Mr. Bailey on the matter, and I took an active interest in that. I went among the people of Manor, Webberville, Del Valle, at Fiskville, and here in Austin;

I did everything I could to get the people to instruct our representatives to vote in favor of Mr. Bailey, and I discussed the matter with hundreds of them, but I don't recall the names. I know their faces but I can't recall their names. I do not base my opinion on what the few men whose names I have mentioned, some of whom are practicing attorneys and disqualified to act as jurors, have said. In regard to my statement that it is almost universally believed that the Waters Pierce Oil Company is a trust, I will say that even among Mr. Bailey's friends a large number think it is a trust—a part of the Standard Oil Company. I have never heard any one say he believed the contrary—that it is not a trust. I have never discussed the case with Judge Penn or Judge Cochran. I have heard them discuss it but not to me. I have been permitted in giving this testimony to name those that I heard discuss the matter in my presence and while I can't remember, for instance, you (Mr. Batts), or Judge Cochran or Judge Penn, talking to me, I have heard you in conversation with other people discuss it. I have not heard anybody go into any detailed discussion of facts that have arisen since 1900 with reference to this present defendant, but I have heard them make certain expressions. For instance, a great many said that they thought the affidavit which was the basis of the re-
admission of the Waters Pierce Oil Company was a lie.
256 Taking up the different parts of the County, with regard to naming the people I have heard discuss any facts of this case, I can't recall any particular person at Summit. From Merrillton I have heard Mr. Parker and Mr. Kemp, the latter was at one time Commissioner here. I have heard Mr. Edgar, and an Irishman at McNeil, by the name of Cahill. As I said before very few discussed the real facts of the case, but nearly everybody gave some particular reason why they thought the Waters Pierce Oil Company was a trust and had been fraudulently re-admitted. It is not my opinion that except for the four men I have just mentioned everybody else at Merrillton is a qualified voter. My opinion is based on the fact that those people are well posted as a rule, and I believe they all voted in this last election, and they all expressed an opinion by means of their ballots. I don't remember the number of votes cast at that box. I don't think more than half voted. I don't think there are twelve men at McNeil that are qualified voters that don't know anything about this case. My opinion as to who is a qualified voter is this: I don't think simply because a man can say that he don't know anything about a case, and simply beca-se he has paid his poll tax or that he is a property-holder or house-holder, and has not been to the penitentiary, that he is a qualified juror. The Court might hold such a man a qualified juror, but still we have a right to set him aside. We have the right to set six aside in a civil case. It was indicated to me only in a general way that any number of jurors at McNeil would be unable to give the defendant a fair and impartial trial. The people that discussed it with me, seemed to think that everybody else was largely of the same opinion.

At Pflugerville I remember discussing the matter with George

Pfluger and Gus Bohles, but there were at the time quite a
257 number of people present. I know their names and know them to speak to, but I can't recall the names just now. They were talking about this matter in a general way, that is, that the Waters Pierce Oil Company is a trust. They gave no particular reason why they thought it is a trust. That discussion was in connection with the Bailey matter. As to whether or not it had any reference to the facts in this particular case, I will say that it did have such reference, because it was going on the proposition that the company had been fraudulently re-admitted into the State. I don't know whether that particular crowd was Bailey or anti-Bailey. I heard a considerable number of the people in that section express themselves one way or another about the matter. I cannot approximate just how many; I wouldn't attempt to do so. I don't know positively that there are not a hundred men at Pflugerville, out of the one hundred and sixty out there, that have no views about this matter, but would be qualified jurors in this case. As far as I have heard the matter discussed in this county, including Pflugerville, I don't think that twelve could be found at Pflugerville who are qualified jurors. My opinion is that if you were to have every one of the men at Pflugerville brought in and tested, that you would not get three jurors. There are neither one hundred nor fifty men at Pflugerville I do not know; I suppose there may be twenty-five I do not know. I do not know personally how any of them stand in this matter. I suppose there are a hundred men at Pflugerville I have heard no expression from. As far as personal contact with those people is *contact with those people is* concerned, I suppose there are a hundred out there about whose attitude in this matter I know nothing. As far as any character of information is concerned, I believe that all of the people have concluded one way or the other
258 in this matter and are disqualified; have prejudged the matter one way or the other, that is, basing my idea on the people of Travis County, believing that they are intelligent enough to post themselves on any such issue as that to be submitted to them, and judging from the manner in which this case has been discussed; not this particular case, based on the identical facts involved in this case, but taking the other anti-trust suit in which the Waters Pierce Oil Company was prohibited from doing business in Texas, and its re-admission, and Mr. Bailey's connection with this matter, and the tremendous effort that was made both for and against Mr. Bailey in this county. I do not know what the vote was at Pflugerville. As to the number of people out there, I will say that it has been a good while since I looked at the list but I think that they generally cast eighty-five or ninety votes. I suppose there are more than one hundred qualified voters. There are more qualified jurors than there are voters. It is a fact that I and all the other people who were managing for Senator Bailey, and Mr. Shelton and the other people against him did all they could to get an expressions from the people on the Bailey business. I think it is also true that more interest with reference to Mr. Bailey, than with reference to this Waters Pierce Oil Company case, was taken. In their discussions of the

matter, the people never separated Mr. Bailey from this case. They did not discuss this particular case, but they talked about the Waters Pierce Oil Company, and whether or not it is a trust, and whether or not it was properly re-admitted into the State of Texas. They didn't go into the facts of this case, just as I stated before.

Dessau and Pflugerville are right together and I don't know where the line is between the citizenship out there. The five or six persons I have already mentioned, I would consider as belonging to Dessau and Pflugerville together. I have heard a number of people
259 from that section of the county, but I can't remember their names, they discussed this Bailey matter and Mr. Bailey's connection with the Waters Pierce Oil Company, and the fact that they thought that the Waters Pierce Oil Company was a part of the Standard Oil Company; but who they are I can't recall. It was not in my mind at the time, as to whether or not they constituted ten per cent. of the population out there; I don't say that they constituted two per cent. or what per cent. I do not say that as far as I know ninety-eight per cent. of the people at Dessau are qualified jurors. I know that quite a number of people out there voted on the matter, but I don't remember now what the vote was. I do not remember who the particular individuals were who discussed this matter, but I heard a great many.

At Fishville I don't remember hearing anybody discuss this matter, except one, who spoke of it in a very casual way, and that was Mr. E. W. Holler, whom I overheard talking to some one on the street.

I didn't go to New Sweden in my campaign. I don't remember what the vote was at New Sweden; I can't recall the vote in my own ward on the proposition. The vote was light out there. From the vote cast out there, I have not come to any conclusion on this case. I remember hearing a many by the name of Bustin, who runs a store right by the church, discussing this case, that is the Waters Pierce Oil Company, in a general way, as I have stated before; he was talking as if he had made up his mind on the matter, and was trying to convince a man he was talking to. I have heard a great many of those people out there discussing the Bailey matter. I don't remember their names now; they are foreign names, but they are people I have known for years. I can't tell just how many I heard, but I have heard more than ten. They were discussing the Bailey matter and the Waters Pierce Oil Company, but not
260 this particular case, as it hadn't been brought at that time. This was during last summer.

I don't remember how many people I talked with at Lund. I may be mistaken, but I think I talked with Mr. Olle at Lund. I don't know the dividing line there; I suppose it is Onion Creek. I have got Lund confused with Dutch Water Hole. Mr. Olle doesn't live at Lund at all. I do not recall any particular person I have spoken to at Lund; I know I have heard a number of people from there discuss the matter. Do not recall any particular person, and do not remember what was said, except in a most general way. Besides Mr. Olle, I do not recall talking to anybody in person from

the Dutch Water Hole neighborhood; but I have heard a number of people discuss it, that I knew were from that neighborhood. I cannot tell how many, because I wasn't taking note of that fact; I think probably six or seven. Outside of the six or seven I spoke to from that neighborhood, I know nothing personally as to the attitude of the jurors there. I do not say that as far as I can give testimony here the balance of the people in that neighborhood are qualified voters; I say as far as I know from personal contact.

I do not know just where Kimbrough is located, but if it is in the neighborhood of Manda, I don't think I have talked to anybody in there personally, except one man by the name of Palmquist, I think. I am not certain just what his voting box is, but he is from that section. Outside of this man, I don't remember talking to anybody else from there in person; that is, talking to any one individually. All I can tell about the attitude of the people in that neighborhood I gathered from what he said, and he wasn't talking to me at the time; he was at Elgin talking to somebody there at the depot. I can't tell how many people from that box are disqualified,
261 except from what he said. He said everybody out there thought the Waters Pierce Oil Company is a trust; is a part of the Standard Oil Company. That is all I know about that neighborhood. This man Palmquist, I think lives out about six miles from Elgin on the road running nearly parallel with the M. K. & T. Railroad; at least, that is where he lived the last time I knew him. I didn't make any inquiry of him to ascertain the extent of his information or anything of that sort; in fact; I never spoke to him personally. He was discussing this case with a number of people, and I was just a listener. They were discussing the Bailey matter there at the depot.

At Manor I a pretty well acquainted. I talked with a good number of people down there to try to get them to vote for Mr. Bailey. I have heard a good many discuss it one way or another. I have heard Mr. Burleson; I have heard Mr. Raney, Mr. Jones, Mr. Pittuck, Mr. Allison, Mr. Palm, Mr. Giles, and Mr. Leudeck. Those are not all I heard, but I can't recall any more by name. I don't know how many; nearly everybody in Manor I have heard discuss it one way or another. Those I have mentioned were not discussing the qualifications of a juror; in fact, I never have heard the matter as to the qualifications of jurors discussed at all. None of those I have mentioned, nor any one else I heard down there, discussed the facts of this case in detail any more than I have heretofore stated. Goodness knows how many I have heard discuss this matter. Mr. Bailey made a speech down there and the whole community came to hear him, and lots of them come here to Austin all the time, and I have heard them time and time again discuss the fact that they believe that there wasn't any question on the proposition at all but what the Standard Oil Company owned the Waters Pierce Oil Company, and there was great divergence of opinion as to whether or not Mr. Bailey knew that fact. I
262 suppose I have heard more people from Manor discuss this matter than any other place outside of Austin. When it

comes to fixing a number, I don't know whether they all voted at the Manor box, but I have heard something like two hundred people from that section discuss the matter. I can mention only a few now, as I don't remember the names of most of them. If I were given a list of the voters down there I could more readily point out whom I heard. I was not down there at the time Mr. Bailey made his speech; I never made a visit to Manor on that question at all. I believe less than half the people there voted but I don't know why.

At Decker, I have heard Mr. Swenson, and right at the end of Decker where it strikes the Webberville Road, I have heard Mr. Ed. Rogers, and the others, his sons; I have heard the storekeeper right on the road there at the south end of Decker. That was not all. Two other men whose names I cannot recall; I know they live on that road, not far from the Decker Church; I heard them talking about the matter. Outside of those I have just mentioned, I don't remember anybody else I have heard discuss the matter in that neighborhood. Of the balance of the population there I know nothing.

I have heard a good many from the Garfield neighborhood, but just exactly whether they were from on the other side of Onion Creek, or Del Valle, I can't say; but I have heard Mr. Givens; Mr. Washington, Mr. Sneed, Dr. Maxwell; Mr. Fowler, Mr. Jones; the Swede that bought Judge Terrell's place—I can't remember his name. I heard a bunch of men down there on the day of the election—the Bailey primary, I mean. I was there from early in the morning until one o'clock, and I heard every man that came there to vote discuss the matter one way or another. That was the Del Valle Box. There were twenty-seven votes cast there, and one hundred and fifty people got out and discussed it one way
263 or another, but passed on, some going to town, and some coming out. I don't now how many people did pass there. I stayed out there and talked with the judges of the election and everybody that came around. I don't know whether they lived at Garfield, or whether or not they were legal voters, but they were passing backwards and forwards. They came from three directions—from down the river, from Garfield, and from Moore's Crossing, and congregated there at the Del Valle Store. What their names were or where they were from I can't tell. I think there are something like two hundred and fifty voters at Garfield and Del Valle. Not from what the people told me, is it a fact that they didn't feel enough interest in this matter at Garfield to go and vote. I was not at Garfield, and don't know whether it is a fact or not that the poll at Garfield was not opened for this election. I know this, as one of the Bailey men. There were twenty-seven votes at Del Valle; twenty-seven for, and fourteen against. A great many people passed there going to and coming from Austin. My recollection is that Mr. Bailey got twenty-eight votes; I don't remember the exact vote against him.

I have heard quite a number of people from the Carl and Bluff Springs neighborhood. I have heard Mr. Thaxton; J. Woods

Smith, I think I have heard Mr. Ab Jones; I have heard Mr. Milo Nuckols, and his brother who died the other day; I have heard the young man in the store there; he is kin to Mr. Caldwell—Tom Caldwell, I have heard him discuss it; I have heard Mr. Wamsley; I have heard the man who used to keep a store at Creedmoor, Mr. Miller, and many others. I have heard a great many from out there, but can't recall their names. Everyone I heard discuss it, seemed to be discussing it as though his mind had been made up. I don't think they held an election at Carl; I don't know why they didn't. I didn't talk to as many people as I heard discuss
264 it in crowds here on the Avenue, but including those I think I heard something like thirty or forty from the Carl, Bluff Springs and Creedmoor neighborhood. That is as many as I can recall of the jurors out of that neighborhood; I cannot undertake to say how the balance stand.

From the Mountain boxes I have talked with and heard Emmet White, just beyond Oatmanville; I heard the storekeeper at Cedar Valley—I have forgotten his name; at Bee Cave I heard Mr. Beck, and I heard one of the Heffingtons, and I heard Mr. Eck; a man who lives on the other side of the creek, Mr. Bray, I believe is his name, and a man by the name of Williams. That is all I can recall of those I heard from that side of the river, outside of perhaps some that I think live at Oatmanville. I don't know exactly where they live. Including Oatmanville, I heard Mr. Patton, Mr. Trautwein, Mr. Nolan, the druggist out there, I can't call his name. Then there is a man just below the drug-store, by the name of Johnson. I heard others whose names I can't recall, but I know they live in that neighborhood. I can think of three or four more, but don't remember their names. I can't recall any more because I made no note of the fact of who they were. I can't remember what all of them said; the matter of whether or not they could try this case fairly was not discussed. From around Fairview and Mud I heard Mr. Lohman and I also heard the Constable of that precinct. I have forgotten his name. That is all whose names I can remember out of the six or eight boxes who have expressed an opinion to the effect that the Waters Pierce Oil Company is a trust, or who discussed the matter in general. I did not hear the facts in this case discussed by those people. Only from what I heard those people say am I able to speak of the attitude of the people in that section of the county.

265 Redirect examination:

As to how prejudice often arises is a question about as wide as the world. As to how mobs are formed, I have no knowledge whatever except from reading. I never lived in a community where there was a mob.

The Bailey matter and Mr. Bailey's alleged connection with the Waters Pierce Oil Company became practically a public question in this county. Mr. Bailey himself is a public man. People usually derive their information as to public questions from the public press; from public utterances of public men, and general conversa-

tions by the various citizens throughout the community, pretending to know, whether they do or not, the facts. In Austin there are only two daily papers published—the Statesman and Tribune. Those papers have a fair circulation throughout the county, as well as in the city. One of those papers was on one side and one on the other in the Bailey matter, and there wasn't an issue of either one when they didn't have something about it. I don't read the Statesman, but I take the Tribune and Galveston News. I haven't taken the Statesman, except on Sundays, for some time. Sometimes I borrow Mr. Shelton's copy at the office, otherwise I don't read the Statesman. I never say anything in either of those papers defending the Waters Pierce Oil Company. Mr. Bailey was defendant, but it was always claimed he had nothing to do with the Waters Pierce Oil Company in a criminal way, but that he represented Mr. Pierce. During the Bailey campaign before the primaries, Mr. Francis, Mr. Cocke, Mr. Bailey, Judge Terrell, and Col. Wynne made speeches. I believe I heard that Mr. Moore made a speech, but I didn't hear him. I heard Mr. Bailey and those others that I have mentioned, except Mr. Cocke. I never heard him. In addition to the speeches, there was personal activity on the part of individuals in town here. There was a Bailey and an anti-
266 Bailey headquarters, and each one had its active partisans in control and management. They had their headquarters and their literature and worked night and day, and buttonholed everybody—strangers and all. If there is a man in Travis County that didn't get fully posted on the subject, I don't see what was the matter with him. I have no doubt but that every man of any intelligence in Travis County was fully advised on that subject; if Travis County couldn't be advised on a matter between the papers and the friends and enemies of Mr. Bailey and people who were not his enemies, but were opposed to him on the facts, and everything of that kind, I don't see how it is possible to say that he lives in a civilized community without having made up his mind on that proposition. I never heard a single man in all this agitation and association of Mr. Bailey's name with the Waters Pierce Oil Company, defend the Waters Pierce Oil Company. If there is a man in Travis County that ever said that the Waters Pierce Oil Company was not a part of the trust, I haven't heard it, whether he be Bailey or anti-Bailey. I haven't any information as to the amount of literature distributed by the Bailey and anti-Bailey headquarters. I never went to the headquarters of either party.

Recross-examination:

I never heard Mr. Bailey say the Waters Pierce Oil Company was not a trust. He didn't make that statement in his speech at the Opera House. I was on the stage and introduced him. If he stated it I didn't hear him, and I think I heard everything he said. It is true I heard him speak of its not being convicted as a trust. Mr. Bailey said that it was the judgment of the court in the case tried six years ago, that the Waters Pierce Oil Company was not a trust.

He read the report of the case—read of their making only
267 one exclusive contract, and that Judge Brooks withdrew the charge of conspiracy, the contract relating to the Standard Oil Company as not being supported by sufficient evidence. He did not, I think make the proposition here that the Waters Pierce Oil Company was not a trust. If he did, he failed to make that impression on me, because I thought he was standing strictly on the case as tried and on the judgment as rendered, and had nothing to do with the question of this State having ousted the Waters Pierce Oil Company by reason of its being a trust, but it was because of its making the exclusive contract, when everybody was stating throughout the country, and everything of that kind, that it had been a trust, when that was not so. He undertook to correct the impression that existed in this county with reference to that judgment. I stated and he stated and everybody state in order to state the truth about the matter, that that was a fact, because it was not convicted. I do not think that the conclusion or judgment of the people was predicated on that judgment of the Court of Travis County. A large number made out like Mr. Bailey was trying to get behind a subterfuge. Other facts that have been developed, besides the judgment rendered here six or seven years ago, were the facts stated in the press and every place else that the Standard Oil Company owned a majority of the stock of this company, and they claimed that Mr. Bailey knew it. I don't know whether that got into the Statesman; I didn't read the Statesman. Mr. Bailey was supported by the Statesman. I do not know as to whether or not the Tribune's circulation is confined to the town here; I have seen a number of copies in the country. With reference to the balance of the press, that part of the press that goes to the country, I didn't see any paper that
went to the country, unless it was the Statesman, or Tribune,
268 and don't know whether any effort was made to develop the facts concerning the Waters Pierce Oil Company's being a trust. My conclusions as to the extent to which the press developed these facts is not based on an inadequate stock of facts. It was developed during the Bailey contest that the Standard Oil Company owned a majority of the stock in the Waters Pierce Oil Company, and Mr. Pierce's testimony taken in St. Louis was published in the Galveston News, Dallas News, Houston Post and San Antonio Express, which went all through this county, as well as those other papers, except the Statesman. I don't know that this has ever been denied; if so, I am not cognizant of it. I don't know to what extent the Galveston News or any of the other papers, go through the county. As to whether or not the other daily papers have been defending the Waters Pierce Oil Company, I cannot say. I don't know about the Fort Worth Record. I don't know about the Houston Post; I do not take the Post, and if it was in there, I did not see it. I understood that the Houston Post defended Mr. Bailey. I did not know it defended the Waters Pierce Oil Company; my understanding was that it defended Mr. Bailey.

Redirect examination:

It is my recollection that Mr. Bailey stated in his speech at the Opera House that he didn't know anything about the Waters Pierce Oil Company's being a trust; that he had been deceived by Mr. Pierce. In that connection he produced the judgment of the court, and stated that the Waters Pierce Oil Company had never been convicted of being a trust in Texas, but that it had been convicted of making one exclusive contract, and he took the Southwestern Reporter and read from it that portion of the case which shows those facts, and the withdrawal of the trust feature of the case from
269 the jury by Judge Brooks. That was with reference to what he knew about its being a trust. He also discussed the Henry & Stribling matter.

GEORGE W. LITTLEFIELD, a witness for the defendant, being duly sworn, testified as follows:

I live in Austin; have lived here twenty-four years. I have been in the banking business here most of the time, that is for seventeen years, and know a good many people in the county. I know a great many people in Travis County, as well as in the city. I have frequently heard discussions with reference to the Waters Pierce trial, and with reference to the candidacy of Mr. Bailey and the Investigation in the Legislature. Just in a casual way I would hear men express their opinions about the matter. I think the concensus of opinion among those I have heard express themselves is that they consider it a trust, and that it is in connection with the Standard Oil Company. I couldn't call to memory with whom I talked about the matter, but in a general way the re-admission of the company into Texas is looked upon as a fraud. I don't know that I have heard so many discussions in regard to the matter; it has been the general impressions. With reference to the question as to whether or not the defendant could in the ordinary way of securing juries, get a jury of impartial unprejudiced men to try this case, I am of the opinion that there is a general prejudice against the Waters Pierce Oil Company. It might be possible to get a jury, but I think great prejudice would be found. I don't know whether it is probable or improbable that a jury of unprejudiced men could be secured in this county. I say there is a general prejudice in the county against the defendant, as a trust dealing unfairly and so on, and I know how those prejudices are with all of us. I do not know of any defenders of the Waters Pierce Oil Company. Don't remember hearing anybody talk in their defense.

270 Cross-examination:

They seem to be prejudiced on account of the concentrating of the business, and the controlling of their line of trade. There is a prejudice against trusts generally; more particularly against that because it affects every householder in the country, I suppose. As to whether or not I could fairly try this case on the evidence introduced, I will say that I wouldn't like to get on the jury. There has been a great deal said about the Waters Pierce Oil Company here;

more especially since the trial of Mr. Bailey. I have not heard the facts in this particular case discussed at all. The discussion I have heard is of men expressing themselves as opposed to the company, and that it ought to be gotten rid of. I don't know whether those people I have heard discuss this case, if they said they could fairly try this case, could in fact do so. I don't know how they feel about it. I only judge them by the way I feel about it myself in that respect; I don't want to get on such a case. I have no particular men in mind. I am a busy man in the bank and haven't interest- myself in this matter. I am not willing to come here and sit all day and give in my testimony in a way that will probably be beneficial to the defendant. I just know I was summoned, was not told what for. I know Mr. W. R. Davis, of Creedmoor. Mr. Davis might be able to try the case fairly if he indicates that notwithstanding any notions that he might have on the subject, that he could do so. I don't know how he feels about it. I know Mr. Davis very well. I know Mr. Reynolds of Govalle, but am not intimately acquainted with him. As to whether or not twelve men of the kind Mr. Davis is could fairly try this case, if they said they could, I can't say. I have *have* known Bill Davis for forty years and regard him as an honorable, upright man, and have great confi-
271 dence in him, but don't know what he has learned in this case; what he knows about the evidence; he might know things I don't know, and he might not feel as I do towards it, and it might be with other men the same way. I would not like to get on the jury, because the country generally is prejudiced against this company; every man nearly will admit that it is a trust, I mean. They are nearly all prejudiced against trusts, but especially against this one, I think. I do not know how many qualified jurors there are who don't know anything about this matter. I am speaking about how I feel; how other men feel I can't say. My whole testimony is predicated on my own feeling in the matter and what men have said in my presence. I don't say a great number have discussed the matter with me, but it is the general impression that has been left with me from my conversations with men in general. I wouldn't undertake to say how many people have spoken to me about this matter; not a great many, I say. My knowledge of the matter of opinion of the people is gained from conversations had with town people mostly. Probably Mr. Davis would be better able to speak of the sentiment in his neighborhood than I am. I think he knows his neighborhood better than I do, and I think he could better speak for his neighborhood than I could. I live in the Fourth Ward. I don't know whether or not you could secure twelve men out of that ward who could fairly try this case. I wouldn't undertake to say that you could, or that you could not.

Redirect examination:

I did not know what I was being summoned for when I was summoned to appear here as a witness. I had not talked with any one connected with this case about the matter. I had no idea what I

was wanted for. When they 'phoned for me I told them
272 I knew nothing of the facts. I have in my testimony undertaken to tell the court the facts as I understand them; nothing more.

Recross-examination:

Notwithstanding the fact that I believe the Waters Pierce Oil Company is a trust, and notwithstanding the fact that I haven't been talked to by any one of the parties and have no interest in the matter, I am willing to come up and be fair in the matter of giving in my testimony.

Redirect examination:

I do not think, considering the fact that I have read the papers with reference to the Waters Pierce Oil Company being a trust, and with reference to the re-admission of the present company into the State after the old company was ousted, that I could weigh the testimony of H. C. Pierce as impartially as if I had not read these things, if I were taken on the jury in this case.

W. E. CARPENTER, a witness for the defendant, being duly sworn, testified as follows:

My name is W. E. Carpenter. I live in the city, and have lived here about twenty-five years. I have lived still longer in Travis County. I lived at Webberville before moving to Austin. I am engaged in the general merchandising business on Pecan Street. My trade hails from down the river, south and north, from Hornsby's Bend, Webberville, Govalle, Del Valle, Creedmoor, Carl, Sprinkle and Manor. I haven't very much trade from out at Fiskville. I do not recollect what the extent of my trade is with the people of that portion of the county; I suppose it is about medium.

I have heard the people discuss the Waters Pierce Oil Company both with reference to their connection with the Bailey con-
273 troversy, and in regard to this suit, during the last few months. I haven't heard the matter discussed to any great extent. I am busy and hear a little and then am called away and afterwards hear a little more. It has been discussed very frequently at the store, by people from different parts of the county. The general opinion expressed by the people I have heard is that the Waters Pierce Oil Company is a trust. They seem also to think that the admission of the present company into Texas, after the old Company was excluded, was fraudulent. I am not able to state whether or not it would be possible to secure in this county a fair and impartial jury for this case. I don't think I ever heard anybody say a good word for the Waters Pierce Oil Company during all of this discussion.

Cross-examination:

I have not heard the particular facts of this case discussed. I heard the matter discussed in connection with the Bailey controversy. I do not now much about the controversy in this case.

Neither do I know whether any of the people I have heard talk about the matter, know what the controversy is in this case. I have heard people speak of this present case a little; I have heard them discuss the facts just in general*ly*. I don't know much about this particular case, but I have an idea, of course. I have not discussed the issues *of* any one today, in regard to this case. I have not read the petition in this case. I have seen a little of the evidence as published in the papers. I haven't any real knowledge of what the issues are in this case. What I know about the case and the Waters Pierce Oil Company has come to me in that way—statements in the papers and general talk; that is about the size of it. I would not want to be on the jury in this case. I reckon I could fairly try this case, if I had to. I would try to be as fair in the
274 final disposition of this case, as I am in giving this testimony in the change of venue matter, and under the instructions of the court, I would decide this case upon what the witnesses said and the evidence introduced. I really don't think I could be a qualified juror in this case. I reckon I could fairly decide it on the evidence introduced. I don't recall anybody I have talked with who intimated that he would be able to qualify as a juror in this case. I don't recollect anyone who I don't think would be a fair and impartial juror in this case. I believe there — at least twelve men among the people I have talked to in my store, who could be as fair *is* this matter as myself. I guess there are that number that are as good as I am, but I believe they are prejudiced against the company. They may and may not be *be* prejudiced — than I am; I can't say. I don't know how many people I talked to about this matter, whether it was forty or a hundred. I just don't know. I don't recollect whom I talked to. I don't know what per cent. they constituted of the total number of qualified jurors, and don't know whether they could qualify in this case or not, as jurors. I can't say what per cent. of my customers I have talked this matter over with; I can't say whether it was more or less than ten per cent. I have talked to them indiscriminately, and have not gone to the bottom of it with any of them. I wasn't busying myself about whether or not they were qualified jurors. Took no special interest in the matter; just heard them talking to me and other people standing around. I made no effort to find out which one was qualified as a juror. I don't know what per cent., whether one or ten per cent., could qualify as jurors.

Redirect examination:

I am prejudiced against the Waters Pierce Oil Company;
275 believe it is a trust. I believe that its re-admission into the State was a fraud. If I were taken under the conditions I have stated—that I have discussed this matter; have read about it, and am prejudiced, I would try to make a fair juror. Of course, I could not weigh the testimony of H. C. Pierce and other officers of the company, or its, witnesses, as impartially as if I had not read and heard what I have. I think all other men would be like myself in this respect.

Recross-examination:

I think my previous knowledge would have something to do with whether or not I believed a person's testimony, if I were on any other jury, and I think it would be one of my functions to tell whether or not they were telling the truth.

ARTHUR FONVILLE, a witness for the defendant, being duly sworn, testified as follows:

Direct examination:

I live at Webberville, Travis County, Texas; I am well acquainted both at Webberville and at Austin. I have lived in Travis County all my life.

I have during the last three or four months heard the Waters Pierce Oil Company discussed among the people of this county, with reference to whether or not it is a trust. I have also heard them discuss the matter as to whether or not the admission of the present company into Texas was a fraud. I have heard these discussions and conversations out at Webberville and here in town mostly. The discussions were among the citizens generally. The general opinion seemed to be that they thought the company is a trust. I think the general opinion also was that the admission of the present company into Texas was a fraud. I never heard any one say he did not think it was a trust; neither did I
276 ever hear any one say that the admission of the present company into Texas was not a fraud.

Cross-examination:

There are a great many people I have not heard express themselves at all on the matter. I was on the jury when they had the case up before, and I heard it talked of as a general matter then. I haven't seen or heard anything, except from general hearsay, to indicate whether or not they could get a fair trial in this county; nothing of my own knowledge. I believe they could get a fair trial in the county, but I don't think they could get a fair and impartial trial the way we have of selecting our juries, but I do think they could get it in the county. I say there are plenty of qualified jurors in the county to give them a fair and impartial trial. I could serve on the jury and give them a fair and impartial trial if I heard the evidence, notwithstanding any prior notion I may have on the subject. I think I know plenty of men in my own neighborhood who would do the same thing; I know enough in Austin who would. I couldn't say that I know at least twelve men in my own neighborhood that would do as I would, but I believe they would give a fair trial. I think they could fairly and impartially try it on the evidence.

Redirect examination:

I said I believe it would be possible to get twelve men in this county who would fairly and impartially try this case, but they

could not be gotten in the ordinary way of securing juries. I don't think they could be gotten in the ordinary way of securing juries. In speaking of this case being up before and my being on the jury, I meant last November. I don't think I heard any discussions among the jurors at that time about the merits of this case. I think I could give the defendant a fair and impartial trial
277 and could weigh the testimony of H. Clay Pierce and other officers of this company as impartially as I could have done if I had not read and heard what I have. If I didn't see the man, but got the testimony by deposition, I think I could weigh the testimony just as impartially, that is, if it had to be sworn to. If it were sworn to it would be the same with me. I might be difficult for me to do it impartially.

Recross-examination:

In saying that I do not think a jury could be selected in the ordinary way, I mean in the general way of selecting thirty or forty men and trying to pick the jury from among that number. I understand the matter of securing a jury to continue until all were secured, and that those who had views on the subject or were prejudiced in the matter would be excused, and others gotten in their place. I think with that process, that is, of getting a special venire, a jury could be secured for this case.

JAMES BYRNE, a witness for the defendant, being duly sworn, testified as follows:

Direct examination:

My name is James Byrne. I live in Austin, having lived here permanently since 1882. I think I have a fairly large acquaintance in the city. I have been in Austin during the past six months. During that time I have not heard much discussion with reference to this suit, but with reference to the Bailey controversy I have. I heard a good deal of talk about it. I heard all kinds of people talking about it; people from the country as well as from the city. Among those I heard discuss the matter, those who were
278 against Mr. Bailey said the Waters Pierce Oil Company was a trust, and accused Mr. Bailey of knowing it at the time the company came back into the State. I have heard it expressed that the Waters Pierce Oil Company should not be allowed here under the law.

I think Mr. Bailey lost the city in the primary election. I do not remember by what amount he lost the city; I think the whole county went a hundred or a fraction over against him. Now I am not sure whether the city went against him, but I know the county was a fraction over a hundred against him.

Taking into consideration what I have heard stated in the discussions I have mentioned, I can't answer as to whether it would be probable or improbable to secure a fair and impartial jury for the trial of this case. As compared with an ordinary case, I think it

would be necessary to have more citizens to draw from. I think it would be more difficult to secure a fair and impartial jury, than in an ordinary case.

J. B. MANOR, a witness for the defendant, being duly sworn, testified as follows:

My name is J. B. Manor. I reside at Webberville, which is about eighteen or twenty miles from Austin. I am a farmer and merchant. Have resided in this county all my life; was born in the county, and am now thirty-nine years old. I am a member of the Grand Jury at this term.

I can't state as to whether or not I am very well acquainted with public sentiment in the community where I reside. I come in contact with a good many people in that community. My business is of a public nature. I have heard the Bailey matter discussed among the people, and in that connection the Waters Pierce Oil Company was discussed. I remember the holding of a primary election in this county about the first of this year, and know it was called for
the purpose of giving the Democrats of the county an oppor-
279 tunity to express their views on the Senatorial succession. Bailey's connection with the trusts was what brought on that election. In connection with those discussions it was assumed that the Waters Pierce Oil Company was a trust. I think it was generally believed that it is a trust. I remember that during that discussion it was charged and discussed among the people that the Waters Pierce Oil Company had once been put out of business in Texas and its permit to do business here forfeited in one of the courts of Travis County. I didn't hear the matter of their getting back into the State under fraudulent pretenses discussed at all after this controversy, but up to the first of the year that seemed to be the general impression we got from the newspapers at that time. I think it was generally believed that the Waters Pierce Oil Company came back into the State as a fraud on the laws and the judgment of the courts of this State. As to whether or not these facts I have stated with reference to public opinion in the vicinity where I live were general at that time, I will say I don't believe I ever heard any one take the other side of the question. I do not take any of the Travis County papers. I take the Manor paper, a weekly publication, called the Progressive Age, I believe. I do not recall how that paper stood in the discussion; I hardly ever read that paper. The general news I get — some of *some of* the daily papers. In regard to the Waters Pierce Oil Company, in regard to people discussing it there in my presence, it didn't seem that they have any enmity against the Waters Pierce Oil Company; it seems the discussion has been in regard to it and Bailey; the people think it is all right for them to employ any counsel, except an officer. I have stated that I believed the people generally assumed that it is a trust, and their opposition to the employment of an officer as their counsel was based on that
assumption. I do not think that the issue of its being a
280 trust has been so prejudiced against the company that it would be difficult for them to get a fair and impartial trial.

My opinion as to the difficulty of getting a juror who has not so prejudged that issue to such an extent that he could not qualify as a juror is this: In almost every case of any prominence we have in the Courts the issues are published and discussed through the newspapers, and that every man who reads the papers forms some opinion for or against it. Now, that is only from the newspaper reports. It doesn't seem that if a man were an honest man that that would affect his decision as a juror in the case, as I think he would have to decide according to the evidence brought in before him. My supposition is that the honest man would lay aside any opinion he had already formed. Because of the fact that the issue as to whether or not the Waters Pierce Oil Company is a trust has been so prejudged in this county, I think it would be more difficult to get a fair and impartial jury to try this case, than it would for any ordinary case. I don't recall any civil case during my residence in the county, that has excited the same public discussion that this case has. At present I don't think of any other civil transaction which got to be a law suit which ever brought on a political campaign in this county.

Cross-examination:

At the present time I see here in the court room listening to the trial of this motion thirty-five or thirty-six people, including the newspaper men reporting the trial, the attorneys on both sides, the officers of the court, and the witnesses subpœnæd, that have been subpœnæd in this issue. I think I have in a great many civil cases seen twice as many people in the Court House watching the
281 proceedings. I think I have seen twice that many in a Justice Court in this county in a civil case.

It is a fact that what I know about the Waters Pierce Oil Company is from newspaper statements, general rumors, and matters of that character. I have never undertaken to find out what the facts are. My opinion is predicated on such statements, newspaper reports and matters of that sort. I think the information possessed by the people in my community is gathered almost exclusively from the press and from discussions. I think if I were called here and tested as to my qualifications as a juror, that I could fairly and impartially try this case. I could disregard anything I had heard up to this time and try it on the evidence and the law before the court. I do believe at this time that the Waters Pierce Oil Company is a trust. I believe I am of the opinion that it was re-admitted into this State through fraud.

R. C. Burleson, a witness for the defendant, being duly sworn, testified as follows:

My name is R. C. Burleson; I live in Austin, Texas. I have lived in the city a little over a year. Before coming to the city I lived at Webberville. I am tolerably well acquainted in the city of Austin. I know nearly everybody down the river towards Webberville. Across the river towards Creedmoor and in fact all over the county I know a good many people.

During the last six months I have heard some discussion in the city of Austin with reference to the Waters Pierce Oil Company trial and also in connection with the Bailey controversy. The matter was pretty well discussed during the primary we had here. In the discussions I heard, I think most of the people thought the Waters Pierce Oil Company is a trust. I gathered that from what they said.

I think most of the people thought it got back into Texas,
282 after the old Company was ousted by fraud. I think these expressions were general among the people who discussed these matters. I do not remember that I ever heard a contrary opinion expressed. I have not heard very many expressions from people living in different parts of the County; I have been living in town since last January. I have heard the matter discussed some by people from my old neighborhood. They expressed themselves about the same was as the other people I have mentioned. From the discussions I have heard, I think the general concensus of opinion among the people is that the Waters Pierce Oil Company is a trust. From the way the people talk, I would take it that they think it is a trust. I don't know what they think as to whether or not the re-admission of the company into Texas was fraudulent.

A political controversy in this county arose over this matter with reference to Senator Bailey, and a primary was called to instruct the Representatives. There was considerable talk and discussion about this matter just before the primary election was held. I suppose I read the published accounts of the testimony taken before the Investigating Committee, but I don't remember anything about it. I just glanced through the papers. I don't remember whether or not I heard that testimony discussed among the people here in the city.

Cross-examination:

I have heard the facts of this case discussed since the application for change of venue was made. Prior to that time I only heard it discussed in connection with Senator Bailey—his connection with the Waters Pierce Oil Company. I don't know how many people I have heard discuss the case of the State of Texas *vs.* Waters Pierce Oil Company, prior to the time the application for change of venue was made, and since the Bailey campaign closed. Only since
283 Monday have I heard the facts of this case discussed. I heard discussions as to whether or not the defendant could get a fair trial, in this county. Some seemed to think they could, and some seemed to think they could not. It looks to me like they ought to be able to get a fair trial. I don't know of any reason why they should not. If I were called as a juror, I would have to admit that I was prejudiced, but I believe I could qualify as a juror. I mean by that that from newspaper reports and general talk outside of the particular facts in the case, I have come to the conclusion that the Waters Pierce Oil Company is part of a trust. I say I am prejudiced, but I have no feeling about the matter. I think if I were brought here as a juror I could honestly state to the Court that I could go into the jury box and decide the case

on the evidence introduced before me. That is the way I feel about it.

Redirect examination:

I think I could, as an honest man although I believe the Waters Pierce Oil Company is a trust, and the people generally so believe, take the oath as a juror is this case and disregard any formed opinion I had about the matter and try the case on the law and the evidence. That would apply to any honest man who went on the jury. I said I thought I could go on the jury and give them a fair trial, even though I am prejudiced against them. I am prejudiced against them.

Redirect examination:

I don't know whether or not there are a great many people between here and Webberville that have not taken any interest in the matter and don't now anything about the Waters Pierce Oil Company. I couldn't say whether there are any who have
284 not expressed themselves on the matter. It is true that I have talked to a great many people since this matter has come up, who didn't discuss the matter with me. A great many people didn't go to the polls. A great many around Webberville didn't go to the polls. There are a good many men in that community who don't or didn't used to take the daily papers. I suppose there are a good many men in that community whom I could meet with and treat with in a business way and who could hold their own in a business way, who have not kept posted with reference to these matters.

Redirect examination:

I do not know that it — a fact that a good many people who didn't vote in the primary because they regarded Mr. Bailey as the Democratic nominee and regarded the matter as settled by the Dallas Convention. I do not know as to that.

H. F. MURRAY, a witness for the defendant, being duly sworn, testified as follows:

My name is H. F. Murray. I live about three miles north of the city. I am engaged in the business of farming and dealing in mules and horses. I have been engaged in the business of dealing in mules and horses for about thirty years. I was engaged in that business here in the city of Austin during the past fall and winter. My customers in that business were mostly farmers, but I sold some to people in town. My customers mostly came from the prairie country to the southeast. I am fairly well acquainted in the city.

During the last six months, particularly during the months of December, January and February, I have heard discussions of the Waters Pierce Oil Company in connection with Senator Bailey's race. I heard the matter discussed right often, not so much among

the farmers, as in the city. I think I heard some discussions
285 among the farmers. My recollection is that it was generally conceded among those I heard discuss the matter, that it was a trust; they looked on it as a trust. I can't call to mind hearing much discussion as to whether or not the re-admission of the company was fraudulent, but the discussions I did hear on that point were to the effect that the re-admission was fraudulent. There was considerable excitement over the question in this city and county during the month of December, that is from the time the primary election was called until the time it was held; at least, that is the view I took of it. I don't believe that I ever heard any one say a good word for the Waters Pierce Oil Company, or undertake to defend*ant* it. It is generally looked upon as a trust; as being a part of the Standard Oil Company.

Cross-examination:

I think I might have heard the facts of this case discussed; but very little, if any. I have heard that it might be termed an ouster case; that they want to oust the company from the State. I have not heard any one who pretended to be able to state what was involved in the case. The view I have with reference to the Waters Pierce Oil Company is based on statements or suggestions seen by me in the papers, and what I have heard in conversations and discussions. I have no knowledge of the particular facts. As to the matters charged in the plaintiff's petition, I have been of the opinion that they are true. I am of the opinion that the Waters Pierce Oil Company is a trust, and my opinion is based on what I have read and heard. It is not such a fixed opinion as would influence me if I were a juror. I have not heard the evidence. It appears to me that I could decide the case on the evidence if I were
taken as a juror. I have not heard any one suggest that
286 he could not do the same thing. I have no ill-feeling whatever against the Waters Pierce Oil Company. I don't think I have ever heard anyone express any ill-will or bad feeling against the Waters Pierce Oil Company. It appears to me as if the defendant could get a fair and impartial trial in this county. There might be some that would be biased, but I think there would be plenty of men that would not be.

Redirect examination:

I do not know exactly what challenges would be allowed in a case of this sort, but it might be that out of a hundred men you could get a jury. I am satisfied in my own mind that there are plenty of impartial men that would render a just verdict. I think that any honest conscientious man would lay aside any previously formed opinion and decide the case exclusively on the law and the evidence. With reference to my being able to look upon the testimony of H. Clay Pierce and other officers of this company as impartially as I could have done if I had never heard any discussions or read anything of this matter, I will say that I don't know about that. It might be so that from what I have read of them and heard of

them, I might not weigh the evidence correctly, or, as you might say, not believe everything those men would say on the stand. I believe I would be inclined from the start to look upon their testimony with suspicion; I have never heard anything about their being untruthful on this proposition. I would have to be convinced that they had been wrongfully charged before I would believe everything that they should say on the stand. I haven't any doubt in my mind that the Waters Pierce Oil Company is a trust, not from what I have read; I haven't any doubt. Having in mind the way jurors are selected, and that the defendant in the trial, of a case is entitled to a jury of unprejudiced men, and under-
287 standing that prejudice does not mean hostility or animosity, but that the case has been prejudged against the defendant; and further that the defendant is entitled to a jury of men who have not formed such opinions that they cannot lay them absolutely aside and look with impartiality upon the testimony of each witness, and decide the case impartiality and without considering what they have read or heard before, I say, considering all these things I don't hardly think it would be easy to get a jury in this county. But I am confident in my mind, not knowing the dispositions of the men that there are plenty of men in the county that would act impartially in a case like this. I still think, after considering all the matters just stated, that I could sit as a juror in this case. Considering the fact that I would look with suspicion upon the testimony of Mr. Pierce, puts the matter in another light. Now, after hearing Mr. Pierce's testimony I might change my mind. It is generally understood that Mr. Pierce did swear falsely in regard to getting the company back into Texas, and I would have to have that rather removed from my mind, that is, that I thought that he did was *was* calculated to swear falsely, before I would believe what he would say. I couldn't tell whether the majority of other men would feel as I do about this. I believe that men who have taken any notice of the case and read the newspapers would be of the opinion that Mr. Pierce had sworn falsely in regard to this case. I think he would have to satisfy them with his presence and his evidence that he had not sworn falsely.

Recross-examination:

If I were taken as a juror in this case and took the oath to fairly and impartially try this case, I think I would try to give to the testimony of each witness that degree of credence that I think it was entitled to under the law, and I am of the opinion that
288 I could do it, but as I said before, in regard to Mr. Pierce, I would have to be satisfied from his evidence that he was not swearing falsely, although I might by his presence and his manner of giving his evidence, be led to think that he was swearing correctly. Assuming the case that the State was depending upon the testimony of Mr. Pierce, under those circumstances I don't think I would be so prejudiced against the defendant as not to give them the benefit of any question that they might be entitled to.

I come in contact with a good many people all over the county.

I rarely ever hear the Waters Pierce Oil Company or the Bailey matter spoken of except by men in the city. I don't know about the people in the country taking the papers, but I guess there are some who do not and who don't take any interest in public affairs. It is because they are very busy from early until dark and don't read much afterwards. I have heard the case talked of very little, outside of meeting men here in town, I have heard very little said about it. I am of the opinion that any views there might be with reference to this matter in the county, so far as my observation goes, are based on newspaper reports, discussions, general rumors and things of that sort.

C. E. GILBERT, a witness for the defendant, being duly sworn, testified as follows:

Direct examination:

My name is C. E. Gilbert. I live in Austin, Texas; have lived hereabout ten years and a half, I believe. I am engaged in the newspaper business. I am the editor of the Tribune, an afternoon paper published here in the city of Austin. Since living in this county I have held the official positions of State Expert Printer and Superintendent of Public Buildings and Grounds. I was
289 State Expert Printer for four years, and Superintendent of Buildings and Grounds for the same number of years. The Tribune has been published continuously from September 1st, of last year, up to this time. During that time the Tribune has had a circulation of about two thousand; sometimes a little over, and sometimes a little less. During September, October, November and December I had nothing to do with the Tribune and cannot state as to its circulation during that time. Since I became connected with the Tribune the circulation somewhat over what it was two months ago, but there hasn't been any marked increase. I have been connected with the Tribune about two months, since about March 1st. When I went in it had a subscription in the city of between sixteen and seventeen hundred. I am not positive as to what it was outside of the city, but I think it was between two and three hundred. I recognize this as the file of the Austin Tribune (pointing to files on table) for the months of January, February and March, 1907. I recognize that (pointing to other file) as the the file of the Tribune for the months of November and December, 1906. I had them brought up here from the office. And this is the file (pointing to third file) for the months July to October 31, 1906.

Cross-examination:

I don't know whether I could say that I have been fairly in touch with public sentiment in this county with reference to the Bailey matter and the Waters Pierce Oil Company since the first of January. I reckon I have. I come in contact with and speak to a great number of people all the time. I discuss matters of interest and matters of public interest with different people, but I have been pretty
290 busy the last few weeks. I also keep up with what is said in the newspapers. From what I have seen and heard and

know, I think the Waters Pierce Oil Company can get a fair and impartial trial in this county. I think I could fairly and impartially try any issue with reference to the Waters Pierce Oil Company. I think any fair-minded man could do that. I think I understand the issues in this case, but I don't know that I have read anything that might be called strictly evidence. I have read newspaper reports and I have heard a good deal said about it. If I were to be chosen as a juror in this case I could certainly try the case on the law as given by the Court, and the evidence as adduced here on the trial of the case.

I said I went with the Tribune about the first of March. I had nothing to do with the paper up to that time. Prior to that time I was not responsible for the editorial expressions of that paper.

Redirect examination:

I said I could act as a juror in this case, but I would not want to do so. From what I have heard and read and understand, I believe the Waters Pierce Oil Company is a trust. With reference to the readmission of the company into Texas in 1900 by fraud, as to the character of fraud I do not know; I think it was procured by misrepresentation or deception. I have only a general impression concerning the affidavit made by Mr. Pierce, from what I have seen and heard. I have never read the affidavit itself. My impression is that the affidavit was not correct, but as I said I have not read the affidavit. While I was Superintendent of Public Buildings and Grounds I did refuse to buy oils for the State from the Waters Pierce Oil Company, but I don't think that it was a matter of prejudice with me. I did not think the State ought to patronize trusts.
291 I think the policy of the State is against trusts and it declares against them, and I told them I would not buy from them. From a sense of duty I looked upon it as a trust and from that sense I refused to buy from them.

I think it is the general sentiment among the people of this city and county that the Waters Pierce Oil Company is a trust. So far as I know and have heard, the general sentiment is that the affidavit which Mr. Pierce made at the time the company was re-admitted into the State was false. I have never heard a contrary opinion expressed. I know that the people generally believe that the permit of this company was obtained by deception and misrepresentation. I believe the people of the city and county generally think that the Waters Pierce Oil Company ought to be ousted from the State. From what I have heard, I think the people of this city and county generally want to see the State succeed in this case and want to put the Waters Pierce Oil Company out of business in Texas.

Recross-examination:

Any views of that kind entertained by me are based on general newspaper statements and irresponsible talk. I don't think that anybody has really undertaken to get at the facts of this matter. I don't think that anybody has undertaken to publish the actual evidence in the case. The same view is general over the State as in the county; I am pretty sure of that.

Redirect examination:

I saw copies of the Chicago American that were distributed here free about the first of January containing what purported to be photographs of vouchers and drafts and so on of the Waters Pierce Oil Company, and what purported to be an interview with
292 Mr. Gruet, the chief witness in this case. I understood at the time that a large number of those papers were sent here and distributed free. I remember it contained articles that were very bitter against Bailey, but don't remember that it had any denunciation of the Waters Pierce Oil Company. I remember it purported to contain a statement by Mr. Gruet of the facts relative to the readmission of the Waters Pierce Oil Company into Texas.

M. J. KNAPE, a witness for the defendant, being duly sworn, testified as follows:

My name is M. J. Knape; I live in Austin, Texas, and have lived here since 1894. I am engaged in the newspaper business. I publish a political newspaper in the Swedish language. It is circulated all over the State of Texas among the Swedish people. Its largest circulation is in Travis and Williamson County; it has about the same circulation in those two counties. We figure that there are about three thousand Swedes in Travis and Williamson Counties, that is counting men, women and children. In Travis County the circulation of my paper is about eighteen hundred; in Williamson it is fourteen or fifteen hundred. It is hard to tell where the largest Swedish settlement in Travis County is located. The Swedish people mostly live in the portions of the county adjoining Williamson and Bastrop Counties.

We didn't take any political sides in our paper during the campaign preceding the election in January. We only asked the people to investigate the facts and find out for themselves. We didn't give the people any advice at all in regard to the matter. Personally I was against Mr. Bailey; my reason for being against him was I thought he had done a thing he ought not to have done, in that he was the people's representative and was also representing the Waters Pierce Oil Company. I thought the Waters Pierce Oil Com-
293 pany was a trust. I heard so much I could not keep from thinking that, but I couldn't say whether it is or not. I have an opinion, however. Some of the people I heard express themselves were for the Waters Pierce Oil Company, and some against it. I do not know how the majority expressed themselves. One day I would meet one or two that were for them, and another day one or two against them. Out in the Swedish settlements I didn't speak to more than half a dozen, and about half of those stood one way and half the other. Those that were against Mr. Bailey gave as their reason that they thought he was representing the Waters Pierce Oil Company and that he was not fit to represent both the Waters Pierce Oil Company and the State of Texas. They are very religious and don't believe in a man serving two masters. The Swedish people are supposed to be very religious, and are people of firm convictions.

No editorials that I know of with reference to Mr. Bailey or the

Waters Pierce Oil Company were published in my paper; nor was any of the evidence taken before the Bailey Investigating Committee, published. None of the witness Gruet's testimony was published, and none of Senator Bailey's.

Cross-examination:

I know of no Swedish paper that took any special interest in the matter. I don't think there was any Swedish paper circulated in this county that took any special interest in the matter. There were a few copies of papers from the north, from Chicago and Minneapolis, but I don't think I saw a word about that in those papers. The only Swedish paper published in Texas had nothing to amount to about it, and I don't remember seeing anything about it in the papers coming from outside of the State. Most of the Swedish
294 people read only the Swedish papers, a majority of them don't read the American papers at all.

In the boxes in which the Swedish people are in the majority, I think the vote was very light, that is, during the Bailey election. A lot of the Swedish people didn't care enough about it to go and vote; didn't take any interest at all. There are lots of them, although quite intelligent that don't know anything about the Waters Pierce Oil Company; don't pay any attention to it. I suppose there are a great many who don't know anything about this suit, but I don't know for certain as to that. I know the Swedish people pretty well. I don't know of any prejudice or feeling against the Waters Pierce Oil Company on the part of the Swedish people of the County. Most of them are intelligent people and are qualified jurors. Most of them, also, are conscientious people. A majority of them are educated; some of the old ones are not. I suppose they are among the best people of the county, and make good conscientious and capable jurors.

A. G. Smoot, a witness for the defendant, being duly sworn, testified as follows:

My name is A. G. Smoot. I have lived in Travis County for thirty years. During the last eight or ten years I have been in the newspaper business; I am connected with the Austin Statesman. For the last year or so I have been in the active management of that paper.

During the year 1901, and during the session of the Legislature of 1901, I was living in Austin. During that session of the Legislature we handled the proceedings of the Legislature very fully. I remember an investigation that was held during that session of the Legislature, concerning Senator Bailey. I remember the reso-
295 lution introduced in that session of the Legislature by Hon. D. A. McFall, now deceased, and then a member of the Legislature from Travis County. I do not remember the details, but I remember the resolution. My recollection is that there was an investigation held by the Legislature as the result of the offering of that resolution and the controversy growing out of it. I think the sessions of that committee were open, and lasted two or three weeks: They probably had one or two executive sessions, but most of it was open.

At that time they were investigating Senator Bailey on the charge that he was connected with the Waters Pierce Oil Company, and it was charged that the Waters Pierce Oil Company was a trust. My recollection is that the newspapers then published in the county gave general publicity to that investigation and the political controversy growing out of it. I don't remember as to the dates about this matter, whether it was after the new company secured a permit or not. I would have to refresh my memory. I think the ouster of the old company and the admission of the new company into the State was the basis of the agitation. The agitation and discussion growing out of that controversy at that time was general in this county as a political question and subject of discussion; as well as the whole state.

I was here in Austin during the last session of the Legislature, and I was here and in the newspaper business at the time of the filing of this present suit against the Waters Pierce Oil Company. With reference to the time of the holding of the Democratic State Convention in August last, this new agitation over the Waters Pierce Oil Company, as I remember it, commenced soon after the publication of Mr. Pierce's testimony taken in St. Louis. I could not state positively as to whether or not there had been any public discussion of what is claimed to be new discoveries in this matter until
296 after the State Convention. I don't remember whether it was prior to or after the State Convention. I think the time of the publication of certain correspondence between Attorney General Davidson and Senator Bailey was last November or December; it was in December. My recollection is that Senator Bailey was here during part of that time, and was away during part of it. The publication of that correspondence commenced here*in* in the city of Austin and was sent out from this city. As a result of that correspondence and as the result of the filing of this suit, and the publication of what is claimed to be disclosures with reference to the Waters Pierce Oil Company, a political campaign was stirred up. The campaign was in the nature of primaries, held to decide whether this county should instruct its Representatives to vote for or against Senator Bailey. To state what the general discussion was and the extent of it, before the primaries would be quite an extensive proposition. It caused a great deal of discussion pro and con. The executive Committee finally decided it by ordering the election. To the best of my knowledge, the question as to whether the Primary was first to be ordered was quite a question of discussion. As a result of this agitation there was about the usual amount of partisan strife, such as ordinarily arises in a political question of that kind. The primary was finally ordered. I couldn't remember the exact number of days from the day of ordering the election to the day it was held, but it was a very short time. I suppose about twelve or fifteen days, probably not so long as that. It was a very short campaign and was fierce while it lasted. Senator Bailey was here and made speeches, and others made speeches against him. Local citizens didn't participate in the campaign in this county as extensively as might be thought they would, but there were some who participated in it.

There was some literature circulated and distributed through-
297 out the county, but to what extent I do not know. It is my recollection that the election was held the 5th day of January. That was, I think, about five days before the convening of the Legislature. After the holding of the primary and in anticipation of the meeting of the Legislature, there was some discussion in the county over the Waters Pierce Oil Company, its method of doing business, and its getting back into the State, but the discussion was principally with regard to Mr. Bailey and not so much concerning the Waters Pierce Oil Company. I think the Waters Pierce Oil Company in that campaign was spoken of as a trust. I don't know whether there were any defenders of the Waters Pierce Oil Company or not. It was not exactly the issue; it was more Bailey than the Waters Pierce Case. I didn't hear enough discussion to base my judgment on the question as to whether or not the real issue was that the Waters Pierce Oil Company was a trust, and in second place, concerning Mr. Bailey's association with it. The discussion immediately after the holding of the primary election and upon the convening of the Legislature, was very lurid for a good part of the time there. I remember that Judge Duncan made a speech in the House of Representatives. I think he opened the campaign, and his speech was very lengthy. There was a very large crowd present in the House of Representatives when Judge Duncan made his speech. Others participated in the discussion, and it excited a great deal of comment, and a very large attendance was there most of the time. My recollection is that Judge Jas. H. Robertson participated in the discussion. The discussion I have just spoken of was preliminary to the investigation proper. The discussion as to whether an investigation would be ordered continued for several days. The Investigation was finally ordered and was held and it seemed to me like it never
298 stopped. I- lasted something like a month and a half. In one way or another during the investigation proper, there was a continual agitation of the matter on the floor of the House of Representatives. We handled the testimony that was heard by the Investigating Committee, pretty fully in the Statesman. I- took up about one-third of our local news space. It was such an item of public news that the substance of the proceedings was reported. I don't know whether the discussion kept up throughout the Investigation; didn't have time to find out about that, but I think everybody was reading the reports. The scope of the Investigation was pretty wide. I heard the name of the Waters Pierce Oil Company mentioned a good deal in connection with the Investigation. I recall the fact that the witness J. P. Gruet was here and testified. He was on the witness stand for some time; I don't remember how long. I do not remember how many pages his testimony covered, but it took up a good many. I remember the fact of his son, J. P. Gruet, Jr., being here and testifying also the fact of John D. Johnson, the General Attorney of the Waters Pierce Oil Company's being here and testifying. I also recall the fact that H. Nordain, an auditor of the Waters Pierce Oil Company, being here and testifying. I think A. J. Hutchings was here also. I believe A. J. Cole, of Dal-

las, who once worked for the Waters Pierce Oil Company, was also here and testified. Senator Bailey also testified. Two counties in the State of Texas held primary elections to instruct their representatives how to vote in the election of United States Senator. Travis County was one and Comanche County the other. There was some agitation in Waco, but no election was ordered. They held a general election as the result of a State senatorial resignation in the West, but that was not a partisan primary. I know as a matter of fact that Travis County is the only county in the State in which they have ever had an investigation of this matter. The old suit against the company on which they were ousted from the State several years ago originated in Travis County. The new suit is now pending in Travis County. I could not answer offhand whether or not during my thirty years of residence in Travis County any other controversy that resulted in a lawsuit has precipitated or provoked a political campaign. I would have to refresh my memory on that point. I have no present recollection of any such having arisen in the county before.

(It was here agreed by Counsel on both sides that certain files of the Austin Daily Statesman which were in their possession, should be considered as properly identified.)

The circulation of the Daily Statesman for the last twelve months in the city can be conservatively placed at five thousand. It has been greater on Sundays than week days. The circulation in the county extends over the Daily and the Semi-Weekly. I suppose the circulation could be safely placed at eight thousand five hundred in all. We do not publish a Weekly Statesman; we publish only a Semi-Weekly and Daily. The Daily includes Sunday.

Cross-examination:

We have always endorsed Mr. Bailey's views on all matters connected with this agitation. I don't know that it could be said that Senator Bailey and his friends have dictated the policy of the paper; we have been supporting him entirely, though. Nothing that was regarded as detrimental to him was put into the paper. Unless a matter had a news feature to it, the editor has tried to keep out everything that was detrimental to Mr. Bailey. The matter before the Investigation Committee was somewhat carefully edited, but not at all times. To my recollection there was not during all this time any discussion of the merits of this case of the State of Texas *vs.* Waters Pierce Oil Company. Nothing except in the line of evidence before the Committee has been said about this case in my paper. I don't remember of anything having been published indicating that the Waters Pierce Oil Company is a trust. My recollection is that the editorial utterances were with regard to Mr. Bailey more than with regard to the Waters Pierce Oil Company. We have never attempted to establish the fact that the Waters Pierce Oil Company is associated with the Standard Oil Company, or that it is a trust. We might have stated it as a news item, but have not gone into it as a logical deduction of the matter. We have not intentionally said anything in the editorial or other

parts of the paper calculated to stir up ill-feeling or ill-will toward the Waters Pierce Oil Company or the Standard Oil Company. Our paper gave currency to all utterances of Mr. Bailey upon every matter connected with his campaign. We published everything that he gave out for publication. I do not recall as to whether we published his contention that the Waters Pierce Oil Company had not been convicted as a trust in the former suit. I rather think we did. We published full reports of his speeches at the Opera House and at the Skating Rink, and if he made that contention in those speeches, it was no doubt published in our paper. Our subscription list for this section of the country, that is, Travis County, has about 8500 subscribers on it. I don't recall that the Statesman has at any time published anything calculated to stir up antagonism to
301 the Waters Pierce Oil Company or to the Standard Oil Company. I don't remember that it has been making any fierce attacks on the trusts or anything of that sort.

I did not compare the reports of the proceedings before the Investigating Committee as published in the other papers of the State and as published in the Statesman, and cannot state whether they handled the matter as fully as the Statesman did. I know that all the daily papers handled it very extensively. The Dallas and Galveston News, San Antonio Express, Fort Worth Record, and the Houston Chronicle all handled it very extensively. I have never discussed the matter of a fair trial to any extent, and therefore don't know whether there is much prejudice or not. I have not heard anything to indicate that the Waters Pierce Oil Company couldn't get a fair trial. The truth is I have heard very little discussion of this particular case. It is part of my business to know what is going on, and as far as I know there has been very little discussion of this case, that is with me. If there is any sentiment in this community to prevent the Waters Pierce Oil Company from getting a fair trial, it has not been expressed to me.

Recross-examination:

So far as the news feature was concerned, I think we handled both sides of the matter. The editorial columns of our paper were friendly to Senator Bailey. I don't recall any editorial utterances for or against the Waters Pierce Oil Company. There were no utterances on that matter, except perhaps in an indirect way. I said if we handled the speeches made by Senator Bailey at the Opera House and Skating Rink in which he spoke of what the Waters Pierce Oil Company was convicted some six years ago, the
302 files will show what he said in his speeches. I do not remember what he said. I think the contention in this county was not as to the Waters Pierce Oil Company's not being a trust, but as to Senator Bailey's knowledge or any connection there might have been between the Waters Pierce Oil Company and the Standard Oil Company at the time of its re-admission into the State. I think that had a good deal to do with the proposition. In as much as it was not an issue, I do not think it was necessary for anybody to defend*ant* the Waters Pierce Oil Company, unless they wanted to.

As I said before, the matter as to whether or not the Waters Pierce Oil Company was a trust, and had come back into Texas through fraud and misrepresentation, was not discussed sufficiently in my presence, for me to form an opinion on what the general public thought.

M. L. JOHNSON, a witness for the defendant, being duly sworn, testified as follows:

My name is M. L. Johnson. I live in Austin, and have been living here about five years. I am now engaged in the printing business. Up to about the first of last December I was engaged in the newspaper business. I was publishing the Austin Sifter. The Sifter was a political paper. The Austin Forum is the labor paper. Up to the time I sold the Sifter I was strictly against Mr. Bailey, and did all I could against him. That was the attitude of the paper. During last fall the circulation of the paper ranged from one to two thousand; never less than a thousand. Editorials against Senator Bailey appeared in that paper. The basis of my opposition to Mr. Bailey was that I thought he was guilty of what he had been charged with, namely, of assisting the Waters Pierce Oil Company or the Standard Oil Company, or whatever you might term it, of assisting them in getting back into the State after they had
303 been driven out. I stated in that paper that the re-admission of the Waters Pierce Oil Company in 1900 was a fraud. I don't know that I urged in that paper that the Waters Pierce Oil Company was a trust, further than they were robbing the people as a trust. I have never said anything good for the Waters Pierce Oil Company.

I am pretty well acquainted in the city. I think I sold that paper in November. I am not sure of that, but I think I did. I did not write any editorial on the affidavit made by Mr. Pierce on which the present company was brought back into the State. So far as I could see the discussion of the Waters Pierce Oil Company and Senator Bailey's connection with it, seemed to overshadow everything else. As to what the concensus of opinion of the people is on the question of whether or not the Waters Pierce Oil Company is a trust, I can best answer that question this way: So far as I can see, and I try to observe everything that comes along in that line, and I talk to all my friends and to strangers, and I think the people generally are against the Waters Pierce Oil Company. A majority of the people I have talked to on this matter, have so expressed themselves. For what the people said in regard to the admission into the State in 1900 of the new company, they seemed to think it was illegally done. I don't say by fraud, but illegally done. I have heard some few people that would stand right up for the Waters Pierce Oil Company and for Mr. Bailey. I have heard very few stand up for the Waters Pierce Oil Company. I have not discussed the affidavit made by Mr. Pierce, with very many people, but those I discussed it with thought it was false. As to whether or not the Waters Pierce Oil Company could secure a fair and impartial trial in this county, I will say that I believe there are as good people in

Austin and Travis County as there are in the State, but as to
304 whether they could secure a fair and impartial trial I could not say, because that would be charging my neighbors and fellow men in a way that I should not do, but it looks to me like they are in a pretty hard row of stumps, if they undertake it here. I believe a majority of the people in this county are prejudiced against the Waters Pierce Oil Company. I am acquainted with a great many of the laboring people in this city. The laboring people, the mechanics, artisans, etc., think it is a rotten thing all the way through. I mean that Senator Bailey and the Waters Pierce Oil Company are rotten things all the way through. All the people I talked to seemed to have a firm conviction in regard to these matters. My conviction with reference to the Waters Pierce Oil Company is that they are just as rotten as can be, and that Pierce Perjured himself, but that is merely my opinion. I couldn't try this case impartially. I- wouldn't do at all for me to go on the jury.

I am the publisher of this pamphlet just shown me. This edition here was published last week. This is a new edition of an old one. The old edition was published about a month ago. That circular was pretty well circulated in Travis County, but it went to several counties. In Travis County something like two thousand copies were put out of the first edition, and perhaps two thousand of the second. I think the second edition was put out Thursday or Friday of last week. The circular was sent to people in the country, as well as in the town.

Cross-examination:

I am enthused over this matter more than the average citizen. I have studied the question more than most of the people I come in contact with. I get every paper I can on it, and give it some
305 thought every day. Most of the people in this county, especially the laboring people are not so intensely interested as I am. It is my intention to work up such intense feeling on the part of the people. My reason is that they are not educated up to the facts, a recognition on my part that they do not know the facts and haven't the proper feeling on the matter. That is the reason I am issuing these circulars. I have come in contact with a few people in town here who don't know anything about this matter, but those that don't know something are very scattering. There are very few that know the facts in the case, and -ome that won't discuss it at all. There is no intense feeling in the matter, further than the few deeply interested in the matter. There were very few that wouldn't talk about the matter at all. They haven't any feeling against the Waters Pierce Oil Company, I suppose. As to whether or not many of the laboring people are too busy to take time to acquaint themselves with these matters of public moment, I can't say, but I believe that there are some laboring people so sick of politics they don't care whether they are informed or not. There are some few of that kind, I think. I can't say that I have discussed the matter with a great many of the people in town; I don't know many. My discussions were with people of all classes and all walks. I have discussed it with more than a hundred people; just to make a rough

guess I would say that I have discussed it with two hundred. I don't know whether it would be safe to limit it to three hundred. I don't know whether I have discussed the matter with more than ten per cent. of the voters of the town. I don't suppose I have a personal acquaintance with more than three or four hundred voters in town. Outside of the city to the north and west and some few east I am well acquainted. I am acquainted with nearly every single man to the county line north. I know them personally. I did busi-
306 ness out at Watters Station, nine miles north of town, and at Merrilltown, which is north of here, and I am well acquainted out there. In the eastern and southern part of the county I haven't any great acquaintance. I have seen at least twenty per cent. of these people during the discussion of this question. There are a great many people in the county I have not discussed the matter with. I did not say the defendant could not get a fair trial in this county; I said I thought it would be rather hard to get a jury, but we have good people here. I think there are a good many people who have not studied the Waters Pierce Oil Company and the Standard Oil Company business and J. W. Bailey as much as they ought to have. There may be a great many people who are not informed about these issues. I believe that if the county were gone over that a jury could be had, but it would be troublesome. I don't want the job of getting a jury.

I sold the Sifter just after the beginning of the Bailey campaign. I fought Bailey in one or two issues, and then sold the paper. The character of the paper changed at once; it wheeled right around. Lots of remarks about the Waters Pierce Oil Company, but they were pleasant and nice. The last expressions from the paper are entirely opposite to what my policy was. My idea in publishing the paper was that the people of this county had no sufficient or proper appreciation of the fact that the Waters Pierce Oil Company and the Standard Oil Company were trusts and were violating the laws of this state. When I sold the paper a new policy altogether was taken up, counteracting the very effect of my efforts to get these facts before the people, and, incidentally, I would not have sold it if I had known it. I don't think the interest in this matter will die out until Mr. Bailey is retired altogether—put on the shelf. There has not been as general discussion of the matter since the Bailey
307 campaign. There has been no further active interest than just to talk about it. There is not as much talk as there was during the campaign. I have discussed the merits of this particular case with a good many people. I- would be a limited number in comparison with the whole population of the county, but if I talk to a man he would talk to several of his neighbors and they would talk about it to others and so it would go on. There has been some discussion as to whether they got back into Texas legally or illegally but most of them seemed to think it was done illegally. I know one or two in this county that have a more intense feeling in this matter than I have. A stranger came from a long distance and called for M. L. Johnson and said "I have come all the way, twelve miles, to shake hands and get acquainted with you," and said, "You

are my man and you discuss that Bailey matter to suit me exactly,". Hardly a day passes but what a str*na*ger comes and asks me if I am M. L. Johnson, and says he wants to look me in the eye. I think there are some few who appreciate the matter as I do, but a very small per cent. are as much enthused as I am. I am willing to come here and testify in behalf of the defendant, because I always try to do what is right, but I would not go beyond what I thought was right. I believe there are men in the county who do not know as many facts about this matter as I do, who could come here and make competent jurors.

Redirect examination:

The expressions of the twenty or thirty per cent. of the people living in the northern portion of the county with whom I have discussed the matter, their expressions were the same as those others I have told about. They expressed themselves with the same practical unanimity. Only one man in the northern portion of
308 the county expressed himself otherwise, and that was Mr. Dink Parker. Having in mind the way a jury is ordinarily selected, I am of the opinion that it would be very hard to get a jury to try this case, but it might be done. I would hate to ride enough to get a jury. I do not know to what extent I can keep my previously conceived ideas from controlling my judgment.

Recross-examination:

I know very few of the Swedish people who live in the Eastern part of the county. I am acquainted with the sentiments of some of of the Swedish people, but very few. I formerly lived at Merrillton; lived there about two years. That was seven years ago. There was only one man out there that I talked with who differed with me about this matter. Those I didn't talk with I don't know anything about further than what their neighbors told me. I didn't keep up with the Bailey election out there. I hadn't got interested in the same way at that time. It may be a fact that not more than half of the people voted in the Bailey Election, and that of those who did vote more than half voted for Bailey; I don't know as to that. There has been a change in sentiment at Merrillton since the primaries. If the thing was to be done over again, it would be done like it was at that place.

Redirect examination:

My acquaintance among the Swedes is limited, and I have not heard many Swedes express themselves. Those that I have talked to about the matter, seemed to think as I do.

Recross-examination:

I can recall some particular individuals among the Swedes
309 that have expressed themselves to me on this matter. It would be a hard matter to state just how many. If I had time to study I might recall several. My acquaintance with the Swedes is limited. At this moment I cannot perhaps recall more than three or four.

Redirect examination:

As far as I can see and learn the sentiment in this county against Mr. Bailey has become more bitter since the first of January. This also applies to the Waters Pierce Oil Company, so far as I can learn.

J. S. BONNER, a witness for the defendant, being duly sworn, testified as follows:

My name is J. S. Bonner. I live in Austin. I am engaged in the business of publishing a paper, called the Harpoon. It is known as Kalamity's Harpoon. I have been publishing that paper about four years. Its circulation in Travis County is somewhere between three thousand and thirty-five hundred. I don't know exactly what its circulation is here in the city of Austin; it is probably a third of it here. During the last six months its circulation has been practically the same in Travis County; it has been increasing slowly. I presume its circulates among all classes of people. I have here a copy of the issue published the first of February; in fact, I have copies for the last six months. It is a monthly publication.

Cross-examination:

My paper is one of general circulation. I come in contact with the people of the town and county and have been coming in contact with them for the last six months, but I don't see as many as a good many people would think. I have discussed the merits of this
310 particular case in my paper. I have not gone into a discussion of the particular facts. My discussions have been mainly of Mr. Bailey and his connection with the Waters Pierce Oil Company. I have commented considerably on the pending case, but I didn't go into the facts because I didn't know what they were. In a general way I have gone into what I understood to be the salient facts. I don't think I am in a position to judge as to the minds of the people of this county with reference to this case. I don't have much conversation with citizens generally. In my discussions with people in regard to this case, I have not heard anything to indicate that the Waters Pierce Oil Company could not get a fair trial in this county. Parties directly interested on the other side indicated that a fair trial could not be had. Personally I don't see why they shouldn't get a fair trial in this county.

Redirect examination:

I have not talked generally with the people in this county with reference to this case. I have tried to mould sentiment against Mr. Bailey through the columns of my paper. I know that the Tribune did the same thing. I don't know that Judge Terrell, Taylor Moore and W. A. Cocke abused Mr. Bailey or not; I know they tried to beat him. They charged that the Waters Pierce Oil Company was operating in violation of law. I know that a majority of the people in Travis County voted against Mr. Bailey in the primary election. I know that the basis of the opposition was the charge that he had been working for the Waters Pierce Oil Company, and that it was a

trust, and a part of the Standard Oil Company. I know that
311 it has been charged that the re-admission of the Waters Pierce Oil Company, or the admission of the present company into Texas was a fraud perpetrated on the State. I have argued that in my paper, and it has been argued in the Austin Tribune and the Houston Chronicle. After these things, I don't see why they couldn't get a fair trial. If they had been lied on, it would change the minds of men. Fair-minded men would give them a fair trial. I say even after considering the matters I have just enumerated as to what has been charged against the Waters Pierce Oil Company, there doesn't anything occur to me that it might not be possible for the defendant to secure a fair trial. I would not like to sit on the jury in this case. There would have to be some powerful evidence to change my mind. From the people I have talked to I have heard very little in regard to the Waters Pierce Oil Company. I suppose because I was on the other side I heard more about Bailey. Being against Bailey our side would talk more. The basis of their opposition to Bailey was his connection with the Waters Pierce Oil Company, and because he got the company back into the State fraudulently, and also because the Waters Pierce Oil Company is a trust. I have not heard anybody say anything good for the Waters Pierce Oil Company.

The local circulation of the Harpoon is 3,500. I am sorry to say that my paper is peculiar in this respect, that if only one copy gets into a neighborhood, everybody reads it.

JOHN L. MARTIN, a witness for the defendant, being duly sworn, testified as follows:

Direct examination:

My name is John L. Martin. I am engaged in the plumbing and electric supply business here in the city. I have been in that business for something over three years; have lived in this city
312 about twenty-five years. I am pretty well acquainted with the public; was not raised here, but have been in the city for twenty-five years. Within the last few months I have heard discussions among the citizens with reference to the Waters Pierce Oil Company and with reference to Senator Bailey. I have heard that generally among the laboring class and contractors. It has been a subject of general discussion with them, during the months of January and February and up until now. The opinion among the people I have heard discuss the matter, is to the effect that it is a trust. That is the general opinion among the people I have heard discuss the matter. I do not think I have ever heard a contrary opinion expressed. The people I heard express themselves seemed to be convinced that it was a trust; they did not seem merely to be of that impression.

Cross-examination:

All I have heard about the case now in court is what I read in the papers. I have not heard any views about the merits of the case.

The people I have heard talk about this matter seemed to think they are going to try the Waters Pierce Oil Company as being a trust; but I haven't heard any one discuss the merits of this case. I don't say the Waters Pierce Oil Company could not get a fair trial in this County. For the last four or five months it is all we have heard in the papers, and I really believe seven-eighths of the people have read the papers in regard to the Waters Pierce Oil Company and Bailey, and have made up their minds that it is a trust and got into the State fraudulently. I have views on this subject myself. They are not based on newspaper reports, general talk and things of that sort, but on my own intelligence. I haven't heard what the evidence is,
and wouldn't say that I would not decide the case fairly, if
313 I were on the jury. I haven't any such decided opinion as to
prevent my doing right in the case. I have it in my head that the Waters Pierce Oil Company is not a trust. I would entertain some doubt as to my ability to treat the State fairly. I have no prejudice whatever against the Waters Pierce Oil Company. Very few people I come in contact with are like myself. The percentage is very small, perhaps one man out of a hundred is on the side I am on. There being about three thousand voters in the city, and assuming that I would associate with a thousand people, at that rate ten men could be found who have no prejudice against the Waters Pierce Oil Company, that is here in the city. It would be a hard matter out of the few men that would be brought here to get a fair and impartial jury of men that would have the view that the Waters Pierce Oil Company was not a trust. I don't say they are not to be found in the county. Not only for the last month or two but for the last six months it seems like every time you get into a crowd that this matter of Bailey and the Waters Pierce Oil Company is brought up.

Without counting them, I should guess there are fifty people in the court room at this time. Counting them, I see thirty five or forty, including the newspaper men, lawyers and officers of the Court. There have been times when I have seen ten times as many people here for the trial of a case. I can't say that I have seen as many in a Justice Court; I have never been in a Justice of the Peace Court but once in my life. I don't visit the courts at all.

I don't know whom I have talked with before I was summoned as a witness. I didn't know why I was summoned. Really don't know who secured my views with reference to this matter. I don't think I talked with Sam Harlan any on this subject. He might have
talked to me, but I don't know. I was talking to a confection-
314 ery man down here the other day. I have talked to a great
many people about this matter and have read the newspapers, and I have no prejudice whatever against the Waters Pierce Oil Company. I try to be an average good citizen. I don't say that I read all the newspapers published here; I read part of them. I read the Statesman and Tribune some; also K. Lamity's Harpoon, and the new one out now, the Prohibition paper. I try to read them all.

J. E. Lucy, a witness for the defendant, being duly sworn, testified as follows:

Direct examination:

My name is James E. Lucy. I live in Austin; I have lived here nearly thirty years. I was Chief of Police here twelve or fourteen years. Since then I have been engaged in the Surety business. It has been seven or eight years since I was Chief of Police the last time. During the last six months I have heard discussions among the citizens of Austin with reference to the Waters Pierce Oil Company and Senator Bailey's connection with it. I think this has been a matter of frequent discussion. There were speakers in the county who discussed the matter. I heard portions of the speeches that were made. I heard a portion of the speech made here one night by Judge Terrell. I didn't hear Taylor Moore's speeches, but I read them. I did not hear Mr. Cocke speak. The extent to which the people in this city have expressed themselves on this matter is large. Every paper that is published here in the city has denounced the Waters Pierce Oil Company as a trust, and nearly every speaker in the last campaign, that is, the Bailey campaign, denounced the Waters Pierce Oil Company as a trust. In fact, literature to that effect was
315 sent all over the county. As to expressions from individual citizens, I will say that I have only talked to intimate friends about the matter. I have not discussed it generally myself, but I just got the impression that the people think the re-admi- Pierce Oil Company is a trust. With reference to the re-admission of the company into the State six years ago, the general impression among the people in the city and county is to the effect that it was fraudulent. I know what the result was of the election held early in January for the purpose of instructing our Representatives whether or not to vote for Senator Bailey. I think the sole question submitted in that primary was just "For Bailey" or "Against Bailey." There was no one running against Senator Bailey. I don't remember the vote that was cast in that election. I think Senator Bailey was defeated by a couple hundred. I think the vote cast against him in the city was something like a hundred and fifty. The basis of the opposition to Senator Bailey was the fact of his aiding the Waters Pierce Oil Company to get back into Texas. The objection urged against the Waters Pierce Oil Company was that they were considered a trust. I believe it was based on Mr. Pierce's testimony in St. Louis, or some acknowledgment that he may have made there. I have had considerable experience with courts. Taking into consideration what I have heard; the public speeches, the individual expressions; what I have seen in the newspapers, my knowledge of the basis of the opposition to Senator Bailey, and the result of the primary election in this county—I do not believe that the Waters Pierce Oil Company can secure a fair and impartial trial in this county, that is, secure a jury of unprejudiced men in the ordinary way of securing
316 juries.

Cross-examination:

I have no individual prejudice against the Waters Pierce Oil Company. With reference to giving the Waters Pierce Oil Company, the defendant, here, a fair trial, I will say that I think I could give any question a fair trial if I were a juror. I have heard just about what everybody else has heard about it being a trust and so on. I think I might be qualified to go into the jury box and give the Waters Pierce Oil Company a fair and impartial trial. I would rather believe it would be a difficult thing to get twelve men who had not made up their minds one way or the other, in this county. As to whether or not I could go into the jury box without any feeling that would prevent me from giving the Waters Pierce Oil Company a fair trial, it would depend upon circumstances. I was not very friendly with the Waters Pierce Oil Company in the beginning of the campaign. As to my present attitude in the matter, I believe, as I said before, that I could give any person or corporation or individual a fair trial. I don't make any exception of the Waters Pierce Oil Company, as far as that is concerned. With regard to the reason for my being willing to assume that the effect of what has gone on in the county would be different on the ordinary man of intelligence and character that the effect it has had on me, I will say that I feel this way about it,—that the Waters Pierce Oil Company has been denounced generally in this county, and the ordinary jury that would be secured in a panel I don't think might be qualified to pass upon a matter of that sort probably as well as I would. It would not be fair for me to assume that persons who would be examined here as to their qualifications as jurors, that they would not answer the questions as fairly as I would. It would not be fair for me to
317 assume special intelligence and virtue that does not come to other men of intelligence and virtue in the county, but at the same time I am of the opinion that there is a great and widespread prejudice in this county. I took quite an interest in the Bailey Election, and was an active Bailey supporter. I did what I could to get a full and proper vote, but did it late in the campaign. We were led to believe that no election would be called in this county, that is, the Bailey people were led to believe that, and finally when it was called we thought that we would ignore it, and until four or five days before the election came off we were quiet and did nothing. We did what we could in the last week or so before the election. I think it is true that a very large per cent. of the people of the county failed to vote in the election, notwithstanding that which was done in the campaign. Quite a number of the people right here in town did not vote. I am not prepared to say it is true that there are a great number of people in this town who have read just about what I have read and heard what I have heard and know just about what I know about the Waters Pierce Oil Company and who now entertain the same views that I do. I think it would be very difficult indeed to get a jury in this town that would fairly and impartially dispose of this case on the facts which would be submitted to them. There may be many people in town who have had the same opportunities for information I have had, but I doubt exceedingly whether a jury

could be found in Travis County that would give the Waters Pierce Oil Company a fair and impartial trial; I think the case has been prejudged by the press in every issue almost that has been printed here for the last four months. I have no special interest in this matter, and am not an employé of the Waters Pierce Oil Company. I do not feel certain that there are a great number of people in this county who have no prejudice in the matter. I don't think I
318 have been just in the same position every body else has with reference to information and reading the papers. I thought that I knew something more about it than the general run of people in this county. I acknowledge that there are many people in the city of Austin who are not substantially different from me in the matter of intellect; I have no doubt there are five hundred men of that kind. I don't doubt that there are perhaps five or six hundred men that would be classed along with me in regard to moral character. In regard to there being four or five hundred people who have had the same advantages or facilities to study the Waters Pierce Oil Company or Mr. Bailey, I will say that I think I have given it a closer consideration and study than the ordinary five hundred men in this city. I am not certain as to whether it is a matter of a little more investigation, and that if they gave it the same investigation they would reach the same conclusion. Assuming the same opportunities and all, I don't assume that any ordinary man would not be fair, but I do assume that this case has been prejudged here beyond any question. It has been hammered into the people daily. I don't think there has been a single issue of the newspapers that haven't denounced the Waters Pierce Oil Company as a trust. I don't know as to whether or not it has not had any effect on me. I don't know that it hasn't put me to the point where I am not prejudiced. I don't know the real facts of the re-admission of the Waters Pierce Oil Company into Texas. I don't know hardly anybody that does. I have not heard the facts discussed. I think the ordinary man brought here to be examined as a juror would have the idea that the Waters Pierce Oil Company is a part of the Standard Oil Company and is a trust. I had that kind of an opinion my-
319 self before I made an investigation, and I don't know whether or not it is true now. I can't say that I have any prejudice against the Waters Pierce Oil Company; and I don't know that I can say that I have no prejudice against it. I have had prejudice against it. I was very much prejudiced against the Waters Pierce Oil Company when it appeared that certain statements had been sworn to by Mr. Pierce which indicated that the Waters Pierce Oil Company was a part of or was owned by the Standard Oil Company, and I thought that Mr. Bailey was deceived. I had no reason especially to change my mind about that, but notwithstanding that, as I said before, I think I have given the matter such personal investigation that I believe I would be able to give them a fair trial, and I don't beileve that every man in this county would. It might be true that there are plenty of unprejudiced men here and that they could be secured for a jury. I would not undertake to say there are not plenty of fair-minded men; my opinion is absolutely that this county and this

community has been poisoned against the Waters Pierce Oil Company and it is being continued. I think I have seen such poisonous matter in the Statesman. I think I have seen suggestions in there that the Waters Pierce Oil Company is a trust. I think such will be found in an examination of the files, and I think it will be found further that the Statesman printed strong articles, not recently perhaps, but they have been printed, about that matter. I may say I know that every single paper and every single newspaper correspondent in this town, without a single exception was an anti-Bailey man and wrote stuff for his papers about that.

Redirect examination:

I think I stated before what the basis was for my feeling
320 considerable resentment with reference to the Waters Pierce Oil Company, but I am not positive that I did. The basis of resentment was that I thought Senator Bailey had been imposed upon by the Waters Pierce Oil Company. I don't doubt it at all that that opinion was shared in by other Bailey men in this city and county. I don't recall any particular men who expressed themselves to that effect, among the Bailey supporters, but I believe that was the general feeling among Bailey men. I was positive and am positive that so far as Mr. Bailey was concerned, he acted perfectly candid, and I made investigation enough to satisfy myself on that question, and I believe that he was deceived. I don't think I could or any other man could determine in advance just to what extent a previously conceived opinion would affect him in rendering a fair and impartial trial in this case. In stating that I do not think the defendant could secure in this county a fair and impartial trial, I certainly took into consideration that the law considers that at times a change of venue would be warranted although it might be possible to get twelve honest and conscientious men who would come up and admit that they had prejudged the case, but still say that they would go into the jury box and render a fair and impartial verdict.

Redirect examination:

I can't say that I am entirely without prejudice in this case. I made some investigations and made some inquiries directly concerning this Bailey incident, of the attorneys of the Waters Pierce Oil Company, Judge Priest and Mr. Johnson, when they were down here, and I think that I have information that the public generally has not in regard to that matter. I made the investigation into this matter as a friend of Mr. Bailey. These matters might have a bearing on this case. I started out with some degree of feeling
321 against the Waters Pierce Oil Company. Now in regard to a development of the facts pertinent to this case having left me without prejudice against the Waters Pierce Oil Company, and my being willing to go into the jury box and give them a fair trial, and being able in this particular hearing to give them help, I say this, that I have had greater opportunities to ascertain what I believe to be the situation in regard to the Waters Pierce Oil Company than the majority of people, than probably anybody else outside of the

lawyers who are interested in the case here. That was done on my motion for my own benefit and for the benefit of Mr. Bailey. I had no interest in the Waters Pierce Oil Company; cared nothing about them. I thought Mr. Bailey had been wronged and had been deceived, and I believe so still. In regard to indicating the facts which I have acquired that have not been acquired by the public, appertaining to whether this company is a trust, I will say I don't think that I ought to detail private conversations between myself and the attorneys; but I can do it, if you desire it. The only additional facts I might know I got directly from the attorneys and their statements, and I don't think that would be proper for me to detail at this time. The attorneys have not been employed by me, and there is no relation of client and attorney between me and those attorneys. I have absolutely no connection with the Waters Pierce Oil Company; our relations are in no sense confidential. I was simply trying to satisfy myself in the matter as a citizen of this town and as a friend of Mr. Bailey. In regard to my stating the additional facts, not stating how I got them, that I have which the other citizens have not, I will say that I don't think I ought to tell the private conversations between the attorneys in this case and myself. I don't think I ought
to be asked to do it. Unless the Court demands that I detail
322 the conversation between the attorneys and myself, I will not
do it. I cannot undertake to detail any facts I know without detailing a private conversation. I can't answer that I know any facts which would convince me that the Waters Pierce Oil Company was not a trust, I can't say that I have any information bearing upon the issue as to whether or not it is a trust, that is not publicly known. I don't know whether the information I have is the same which the ordinary citizen has. I said that most of the people in Travis County, judging from the conditions, would not be likely to give the Waters Pierce Oil Company a fair trial. I say this in regard to the selection of Jurors, that I have been about the court house all my life and seen a great many trials, and I believe that I would not be affected as the ordinary juror that would be picked up. I don't mean to say that I am better qualified intellectually, but say that I am more familiar with court procedure. I think that a man who is familiar with such procedure would be better equipped than an ordinary man to decide. I think a lawyer would be better able to decide the justice of a case than a layman. My relations with Mr. Pierce and Mr. Johnson are neither close or confidential. When the petition in this case was filed here they were in town and I went to see them in regard to this matter and to get such facts as I could from them in regard to the transaction. I don't know whether it was at the time this case was filed; it was about the time of the Bailey controversy. That is the only relation I have with them.

J. P. LIGHTFOOT, a witness for the defendant, being duly sworn, testified as follows:

Direct examination:

My name is Jewell P. Lightfoot. I am one of the assistants
323 to the Attorney General in this case. I have just heard the
reading to the Court of the notice filed November 27th last,

demanding that the defendant in this case produce certain books, papers, vouchers and so on. It is not a fact that contemporaneously with the preparation of this notice I had carbon copies prepared and furnished to the Representatives of the Press here in Austin for immediate publication. There were only three copies prepared. I don't think one was immediately furnished to a representative of one of the newspapers here for publication by me. One copy was prepared for the office, another was filed in the Court, and the third was served on Judge Clark. Since the matter has been called to my attention, my recollection is that Mr. Thornton phoned me and said that some representatives of the press had the copy that was filed in the Court, and that he was anxious to get it on the wire for his paper, and wanted to know if I had another copy in the office. I did not know as a matter of fact that this notice was going over the wires within a few minutes after it was filed. Mr. Brady, Mr. Batts and myself after the notice was prepared came down to the court room and Mr. Hart was in his office. I left him a copy and told him I wanted to file a copy in the court, but before I would have the filemarks put on it I would go and serve a copy on Judge Clark. Mr. Batts took a car and went on towards home, and Mr. Brady and I went to Judge Clark's room at the Driskill, but he was not there. Some one informed us he was probably at Cochran & Penn's office, and then Mr. Brady and myself started to that office and met Judge Clark right in the middle of the street where East Sixth Street crosses Congress Avenue. We served the copy there and Mr. Brady and I turned and left—Mr. Brady went home, and I came by the office and informed the Clerk that I had served the copy, and he filed
the copy at 7:05 P. M. I then went to my home and I never
324 saw a newspaper reporter during the whole round, but an
hour or two afterwards that Mr. Thornton called me up and we had the conversation I have already detailed. It is not a fact that I showed the notice to the newspapers reporters before it was filed. I showed it to no one except Mr. Thornton, and he saw it an hour or two after the papers were filed in the Court.

EDWARD SCHUTZE, a witness for the defendant, being duly sworn, testified as follows:

My name is Ed Schutze. I live in Austin, and have lived here all my life. I am engaged in the business of publishing a newspaper—the Texas Vorwaerts. I have been with the paper for twenty-three years. I am not the editor of the paper. I was connected with that paper as its publisher during the months of October, November and December, 1906, and also during the months of the present year down to this date. That paper is published in the German language and circulates mainly among the German citizens. The circulation in this county is four or five hundred; I have never counted the subscribers. In Austin the circulation is something like two hundred and fifty. During the latter part of last year that paper had editorial utterances regarding Senator Bailey and regarding the Oil Trust, but it didn't specially mention the Waters Pierce Oil Company. I couldn't say how often Senator Bailey was referred to, but not frequently; may be, two or three times. I don't exactly remember

what was said in substance respecting Senator Bailey's connection with the Oil Trust, as I didn't read the articles. I have the papers here with me and could turn to those articles, but it would be a hard job, and would take some time to translate them. The attitude of the paper was anti-Bailey, basing its attitude on the agitation
325 that was started that he represented the trust, and the paper didn't think he was fit to be the Senator of Texas. I don't remember exactly whether it said trust, but I think it said the Oil Trust. I think that was the only trust he was charged to have any connection with. The connection on his part as a lawyer, I believe is what was objected to. I don't remember whether anything was said in regard to the instrumentality of Senator Bailey in securing the admission of the Waters Pierce Oil Company into Texas by fraud after it had been ousted by this Court. Whatever was said on that subject in my paper was adverse to Mr. Bailey. It had nothing to say in his favor. Nothing was said in favor of the Oil Trust that I know of. I think a few of the German boxes on the outside went anti-Bailey in the primary election held in this county. I don't know for certain; the returns will show.

Cross-examination:

I don't think there was any discussion at all in my paper of the Waters Pierce Oil Company. Made no statement that it was or was not a trust. As far as I remember, it just spoke of the Oil Trust. I have no personal knowledge of the Waters Pierce Oil Company; do not know whether it is a trust, or not. I read the papers about as much as most German citizens do. I have no prejudice at all against the defendant in this case. I claim to be a fairly representative German citizen. I do not know of any prejudice or ill-feeling against the Waters Pierce Oil Company in this county among the German citizens. It is my recollection that some of the German boxes went against Bailey. I think Pflugerville went against him. I can't remember how much; I think something like sixteen. It might have been fifteen to seventeen; I don't remember. According to the last votes I think they claimed seventy-five votes at Pflugerville. I do not know whether they are all German
326 votes or not; I think not.

I know of no reason, if I were summoned here as a juror, why I could not serve as a juror and fairly and impartially try this case. I never heard any German citizens express themselves to the effect that by reason of prejudice they could not fairly and impartially try this case. I have never heard any expressions of prejudice from any of the Germans. I associate with them intimately and most of the time; meet them in a social way whenever I have an opportunity. I meet some one or more of them and talk with them every day. I think there are a considerable number of Germans out at Bee Cave. As well as I can remember, I don't believe any election was held at that place in the Bailey matter. I do not know of any reason why the Waters Pierce Oil Company could not get a fair and impartial trial of this case in Travis County.

Redirect examination:

I don't know whether the Waters Pierce Oil Company is a trust or not. As to what my opinion on the mater is, well I don't know whether it is a trust or not a trust. As far as the agitation is concerned, I might believe it is, but I don't know. I don't remember that I have ever called it so in my conversations with people. I do not know whether its introduction into Texas after the ouster was fraudulent or not. My only view is that our Senator took them in hand and represented them, but whether it was fraudulent or not, I don't know. My objections to Senator Bailey's helping them was that he was representing a trust which our laws prohibited from entering our State. I thought it was on Oil Trust he was helping, but didn't know whether it was the Waters Pierce Oil Company or not. I do not know that the only oil company in Texas against which there has been much said was the Waters Pierce Oil Company.

I think that is the one the people always talk about, and say
327 that it belongs to the Standard Oil Company. I do not say that that was my idea; it might have been my idea. I do not remember in my associations with my German fellow-citizens that they sometimes refer to this as a trust. I think not; they don't bother about it. Some of them are pretty well informed, and my paper told them something about it—it spoke of Bailey and the Oil Trust. I cannot say that it said that to influence my people against Bailey. The object of the paper was not to have Senator Bailey re-elected, because he represented the trusts, whether the Oil Trust or not.

Recross-examination:

I have no definite notion at this time whether the Waters Pierce Oil Company is a trust. I know no German citizens that have, notwithstanding I am running a German newspaper and come in contact with a great number. It is a fact that the criticism in my paper of Senator Bailey was predicated on the general idea that he was representing an Oil Trust, without any specific idea on notion that the Waters Pierce Oil Company was itself a trust. I don't know that I have heard it said that it was the Southwestern Oil Company he was representing, but that it was a Trust. I did not hear of his drawing the charter of the Security Oil Company of Beaumont, or of voting the stock of the Security Oil Company at Houston.

Redirect examination:

I read the communications addressed by Attorney General Davidson to Mr. Bailey, the open letters published in the newspapers, in which the Attorney General charged Bailey with being connected with the Waters Pierce Oil Company, and in which he asserted that the Waters Pierce Oil Company was a trust. I didn't write the

editorial utterances in my paper and do not know when they
328 were published. I think it was previous to the primaries.

I don't remember the dates when the Attorney General's letters were published. I think my paper spoke on that after the

letter was written and published on October 9th. My editor may have had in mind that the Waters Pierce Oil Company was a trust. He wrote the articles in my paper. The fact that Attorney General Davidson's letters came from the head of a Department of the State made an impression on me; I believed what he said was true; and most people did.

E. SEELIG, a witness for the defendant, being duly sworn, testified as follows:

My name is E. Seelig. I live in Austin, Texas, and am engaged in the cigar and news business. I have been engaged in that business for fourteen years. My place of business is located on Congress Avenue, on the East side, between Sixth and Seventh Streets. About the 20th to 23rd of January of this past year I received at my newsstand for free distribution copies of a paper called the Chicago American. It was an issue of the paper containing what purported to be photographic copies of vouchers and other papers relating to the Waters Pierce Oil Company and Senator Bailey. It also contained what purported to be an interview with John P. Gruet. I think I received in the neighborhood of 2500 copies of that paper. My instructions with reference to them were to distribute them free of charge; that if there were any extra charges from me, why just to send my bill in to them. Those papers were sent to me from the Chicago American Office. I got a telegram from them notifying me that they were going to send that many copies down here for free distribution. I think all they sent me were distributed by me.

329 I did not have to send out and distribute them; people came and got them. There was quite a demand for them after the people found out they were in town, and I believe they were at some other newsstands. I wasn't the only one; they were sent to three or four in the city, but I don't know whether they were all put on for distribution. The people who called for them were citizens of Austin and Travis County, and some were strangers. It was during the time of the Legislature and so a great many strangers got them. There were generally distributed among the people of Austin and Travis County.

Cross-examination:

I think the Waters Pierce people got some of them. Mr. McNulty came and got some of them. I really don't know how many copies he got. There was some trouble about the papers. A darky bootblack happened to sit on the outside and had a lot of papers on his lap and handed them out to the people. The people came and got them; they knew he had them there. And it seems like Mr. Lucy found out that those papers were to be given away, and he came by and took the whole bunch away, as I understand it. I didn't see it myself. I didn't know anything about the negro having these papers, and I told him not to take any more and sit on the outside, when I learned about this, and told him to let the people come on the inside, and so I had them on the showcase, and Mr. McNulty came in and asked if he could take one or two, and my young man

said, "Help yourself," and I believe he took six or seven; and I found out they were trying to get them away from me and burn them up, and I understood that they sent a lot of boys from the Driskill who got them for that purpose. So I took the papers and stuck them behind the counter, and if anybody asked for them I just gave them a copy, because I wasn't interest- one way or another, in the Waters Pierce Oil Company or the Chicago Examiner.
330 They sent them to me for distribution, and I wanted to give them to the proper people, and didn't want them destroyed. I understood that a boy at the Driskill said he got a lot of them from me and burned them up. The boy was sent around by some of the Bailey people or the Waters Pierce people. The way I found out about the effect that was being made to destroy the papers was Captain Lucy's taking the papers from the negro boy. That was James E. Lucy. The next thing I knew about it was when Mr. McNulty got copies. I don't know him personally. I have been told that he works for the Waters Pierce Oil Company. When the boy from the Driskill came and got the papers for the purpose of burning them up, I stopped that.

I have no views on the subject of whether or not the Waters Pierce Oil Company is a trust; I do not know. All I know about this case is what I have read in the papers. I have no prejudice whatever against the Waters Pierce Oil Company. All I know about the question of whether or not it was readmitted into the State by fraud, I read in the papers. I have no outside views on the matter, and don't know whether it was re-admitted by fraud. I have no character of prejudice whatever against the defendant. If I were called as a juror I could say that I could decide the case fairly and impartially upon the evidence. I do not come in contact with a great many people. I am engaged in a public business and have been for fourteen years. I know a great many people in town, but don't know many country people; don't get out much. My acquaintance is largely in town. From what I know of the people in town, and what I have heard from them and read in the papers, I don't see any reason why they shouldn't get a fair and impartial trial in this county. I never heard anybody say they couldn't, and I don't see why they couldn't get as fair a trial here as any-
331 where in the State. I don't see any reason why they couldn't get an absolutely fair trial here.

Redirect examination:

I am pretty busy at my place of business all the time. I do not stay there every night, but every other night only. I do not talk to my customers much; just wait on them. Don't talk any politics. I don't talk a great deal, and do not take much interest in public affairs in the way of discussions. I have heard some people express themselves with reference to the Waters Pierce Oil Company. You hear that of course just when two or three people are standing there discussing it. From what I have heard I could say that the readmission of the Waters Pierce Oil Company into Texas six years ago was a fraud. I don't know whether it is or not; I wouldn't say.

positively. From general newspaper talk, my impression is that it is a fraud. I don't say what the people seem to think about the matter, from what I have heard discussed and the few I have heard discuss it. The people that come into my place of business are not much interested in such affairs. They are nearly all young people and don't talk much about such things. Not all the people who get the papers were young people. I really don't know anything about the affidavit alleged to have been made by Mr. Pierce. I don't read but very little of such affairs as that.

Recross-examination:

There are a great many other very busy men in town besides myself. There are a great many who don't take any special interest in these affairs. I have discussed this matter very little with my intimate acquaintances. They know I don't take much stock in it. I haven't heard them talking among themselves and show any
332 great interest. I don't know of any excitement in this town or special interest in this case. In my capacity as a dealer in newspapers and cigars I come in contact with a good many people, and if there is any matter of public inter-st going on in which they take a great deal of interest they make remarks about it but don't stop very long. There may be considerable inter-st taken in this case, but not around my place.

G. W. MENDELL, a witness for the defendant, being duly sworn, testified as follows:

My name is George Mendell. I live in Austin; have lived here about eighteen years. I am local correspondent for the Houston Chronicle. I have been local correspondent from Austin for the Houston Chronicle for about four years. The circulation of the Houston Chronicle in Travis County for the past six or eight months has been about 400 daily and six to eight hundred on Sunday. I do not know anything about its circulation at Manor. I am familiar with the contents of the paper now before me. The photographs, articles and interviews published in that paper relating to the Waters Pierce Oil Company case and to Senator Bailey are reproductions of the same things as they appeared in the Chicago Examiner, the issue that Mr. Seelig testified about this morning. Photographs and all are the same. The paper shown the witness and the parts referred to by him was pages 1, 2 and 3 of the Houston Chronicle of January 27th, 1907, and hereinafter set out.

Cross-examination:

I have during the time I have indicated, that is, during the last six or eight months, read all the copies of the Chronicle. I know what it contained in general with referenec to the Waters Pierce Oil Company and the Bailey matter. It was the intention and
333 idea of that paper to publish both sides of the controversy, and it did so to a great extent. It printed all the letters that Senator Bailey gave out in reply to matters that had been brought up in this case and in reply to letter of the Attorney General, and it

printed anything that Senator Bailey might see fit to say or any of his friends who might take the trouble. It printed and gave publicity to the argument or statement of Senator Bailey that the Waters Pierce Oil Company had not in the previous suit been convicted of being a trust. It also printed and gave publicity to the statement and claim of Mr. Johnson and Mr. Priest to the effect that the statement or affidavit of Mr. Pierce was in accordance with the truth, and that that statement or affidavit of Mr. Pierce was made at the suggestion and under the direction of attorney in the case. It also published and gave publicity to the statement and contention of Mr. Bailey that the vouchers which have been referred to were forgeries. It printed every utterance of Mr. Bailey on the subject that we could get hold of in any way, either from his own papers or from himself. I have not regularly read the Houston Post during the last six or eight months, but only occasionally. I can't answer as to whether or not the Houston Post also published and circulated the claims of Mr. Bailey, to the effect that the Waters Pierce Oil Company had not been convicted as a trust, that the documents and vouchers were forgeries, etc. I do not know as to whether or not the Houston Post has been defending Mr. Pierce and claiming that Mr. Pierce was not guilty of making the false affidavit. I do not know anything about the circulation of the Houston Post. I should judge they have considerable circulation here. I know that it has a circulation here.

334 I have heard discussions of the question as to whether or not the Waters Pierce Oil Company could get a fair and impartial trial in this County. I have not heard any other than what I heard in reporting the case. I haven't heard anything to the effect that it could not get a fair trial. I am a newspaper man and lately have been circulating mainly among the members of the Legislature. Have not been on the streets much. During the last five or six months I have heard discussions with reference to Bailey and the Waters Pierce Oil Company. Haven't heard anything in those discussions that the Waters Pierce Oil Company could or could not get a fair and impartial trial in this county. I haven't heard or seen anything to indicate that the people of Travis County are taking any particular interest in this particular case. So far as the attendance on this court is concerned, I should think they were not. It is a fact that the principal attendance here has been of attorneys and newspaper men and witnesses. I have seen a great many cases on trial here where more people have been on attendance, excluding the classes I have mentioned just now. The discussion I have heard of these matters during the last five or six months have generally been about Bailey and his connection with the Waters Pierce Oil Company, which is regarded as a trust. I have not generally heard any discussion as to whether or not the Waters Pierce Oil Company is a trust.

Redirect examination:

I don't think the circulation of the Houston Post in this County is anything like as large as that of the Chronicle. Our paper is twenty-five cents a month cheaper, and the people have an idea they

can get all the news out of the Chronicle. It is probable that since some time in December the editorials and headlines of the Houston Chronicle have been continually adverse to Mr. Bailey and
335 incidentally adverse to the Waters Pierce Oil Company and H. C. Pierce. Editorially that has been the case, and the headline-writer would let his opinion creep into his writing in the headlines.

I am pretty well acquainted in Austin. I regard the Waters Pierce Oil Company as a trust, and in the discussions I have heard about Bailey it is generally regarded as a trust. I never heard anybody who regarded that it is not a trust. It is generally regarded among the people that I know and have heard express themselves, that Mr. Pierce's affidavit made when this company obtained its permit to do business in Texas was false. I have also heard the people say they regarded the re-admission of the company into Texas as a fraud perpetrated on the State, and I have also heard Mr. Bailey deny that. This amounts almost to a positive conviction with me and most of the people of this county that I have talked with; it is the same way in regard to all questions adverse to the company. I attended both the regular and special sessions of the Legislature just closed. I remember when the resolution to investigate Senator Bailey on account of his alleged connection with the Waters Pierce Oil Company and other matters was introduced. I was present when these matters were discussed, in the Legislature, and heard the arguments of Judge Duncan and Judge Robertson and others in favor of the Investigation. I heard it charged on the floor of the House that the Waters Pierce Oil Company was a trust; it was done by leading members of the Legislature. I also heard it charged that the affidavit of Mr. Pierce, already referred to was false, and that the admission of this company into Texas was a fraud. There was a very large attendance during the time of those discussions. I don't know what part was confined to Travis County; there were a great many people here from a distance. The galleries were always crowded. I frequently sa/ people of Austin and Travis County there, but I
336 can't state which were in the majority—they or the strangers. The anti-Bailey speeches were not published to any great extent in the local papers, but the Bailey speeches were. The Tribune is rather small and could not print the speeches in full. It published synopses of the anti-Bailey speeches.

During the month of December, that is, for three or four weeks preceding the primary election here, held about the fifth of January, Senator Bailey and his alleged connection with the Waters Pierce Oil Company and its re-entry into the State was the principal topic of political discussion in Austin. I don't know about the county in regard to this. This discussion continued in the Legislature. My duties took me to that and I wasn't on the streets much, except going to and from dinner. It was the subject of a great deal of discussion in both halls of the Legislature and in the lobbies and on the galleries. It would crop out at times even during the special session of the Legislature. For instance, a measure of some kind would be up, and Bailey's friends thought it would be a stab at him, and the

anti-Bailey people would think it was not. But the discussions were not as frequent as up to the time of the so-called vindication. I did not during the session of the Legislature ever hear any friend of Mr. Bailey or any one else defend the Waters Pierce Oil Company or H. C. Pierce against the charges brought against them. They defended Bailey, but I didn't hear that part of it.

I have seen other civil cases on trial in a District Court of Travis County where there were as large a number of newspaper men taking down the testimony and reporting the proceedings, as there are here. One was an anti-trust case against the Pullman Palace Car Company and the other was the Fort Worth Stockyards case. In fact, most of the anti-trust cases attracted the attention of
337 the staff men who are here. I reported those cases to the same extent that I am reporting this case. Of the correspondents here now, there are Mr. Wassom, for the Dallas and Galveston News, Mr. Pricer for the San Antonio Express, Mr. Stroter, I believe, is writing for the Statesman; I report for the Houston Chronicle. Each of these papers tries to gives the news features of the proceedings here, that is the substance. There has been a reporter here for the Tribune, I don't see him now. I think his name is Anderson. There is no one here that I know of, reporter for the Houston Post. They get their news through the Statesman. Outside of those anti-trust cases, I have never known of a civil case in which there has been as much interest manifested by the newspaper men. I do not know, of course, what the attendance will be here if this case goes to trial on the facts.

Recross-examination:

I have not heard anybody say a good word for Mr. Pierce or the Waters Pierce Oil Company during this controversy, that I can recall. I did not state a while ago that Mr. Bailey defended Mr. Pierce and the defendant. I said Mr. Bailey defended the charge that it was fraudulently re-admitted. I have heard him say frequently that that was untrue, and no one would repeat it but liars and dogs and scoundrels. I never heard him make the statement that the Standard Oil Company was attacking Mr. Pierce in these proceedings. He said that with regard to the Attorney General and these officials in his speech. I haven't heard the Standard Oil Company feature of it mentioned. I never say this contention published in the Post; I heard that was the case. I say that the Waters Pierce is a trust, and mean by that I believe that a majority of its
338 stock is owned by the Standard Oil Company. I don't know what the general belief is on that, but it is mine. And when I speak of its being fraudulently re-admitted into the State, I mean that when Mr. Pierce made the affidavit the Standard Oil Company then owned a majority of the stock, and that he knew it. I think that it is general basis for the belief that the Waters Pierce Oil Company is a trust, that is to say, that it is controlled by the Standard Oil Company; and also that when Mr. Pierce made the affidavit on which the Waters Pierce Oil Company was re-admitted into the State he knew that the Waters Pierce Oil Company was owned and controlled by the Standard Oil Company.

GLENN PRICER, a witness for the defendant, being duly sworn, testified as follows:

My name is Glenn Pricer. I live in Austin, and have been here for five months. My business here during the session of the Legislature just closed, both regular and extra sessions, was that of Correspondent for the San Antonio Express. During that time my duties called me to different places. I was in the House part of the time; part of the time in the Senate, and part of the time in the Bailey Investigating Committee room. I was present in the State Senate when nominations were being made for United States Senator. I know Senator G. W. Glasscock, and know that he is the Representative for Travis and Williamson Counties in the State Senate. He lives in Georgetown. I heard his speech on the occasion just mentioned. I do not think I made any notes from his speech at the time; I think he had a copy prepared and I used that. I think he nominated A. W. Terrell for United States Senator. I remember he was denunciatory of both Senator Bailey and the Waters Pierce Oil Company in his speech. I do not think there
339 was any one more violent against the Waters Pierce Oil Company than Senator Glasscock, throughout the session of the Legislature and the controversy pending over the Senatorship growing out of the controversy over the Waters Pierce Oil Company.

Cross-examination:

I don't remember exactly what Senator Glasscock said about the Waters Pierce Oil Company. He discussed the Waters Pierce Oil Company to some extent, but only because of Senator Bailey's connection with it. I think he said it was a trust; I am not quite sure he did. I do not think he discussed the facts on which he predicated that. He just denounced the company in a general way. That was on the occasion of the speech he made in nominating Judge Terrell for the Unted States Senate. He denounced it on several other occasions also. I do not think that in reporting his speech or any of the proceedings that I reported any of the facts indicating that the Waters Pierce Oil Company was a trust. I had his speech as he wrote it, and if there was anything in that I don't remember. I don't think I wrote anything myself about its being a trust.

The paper I represent is the San Antonio Express. I don't know whether the San Antonio Express published Senator Bailey's contentions to the effect that the old judgment of the District Court of Travis County didn't hold that the Waters Pierce Oil Company was a trust. I think it was their intention to publish all the letters given out by him. They published his contention that the vouchers and documents referred to by the Attorney General were forgeries. They also published his suggestion that there was a conspiracy among the officers and his enemies against the Waters Pierce Oil Company and Pierce himself.

340 Redirect examination:

Judge J. H. Robertson and Colonel John L. Peeler represented Travis County in the House of Representatives. I was not in the House when they voted on the question of United States Senator.

As a matter of general knowledge, I know they voted against Senator Bailey and for some other person. There was no other nominee by any other party for the United States Senate than Senator Bailey, the nominee of the Democratic Party. I know that Senator Glasscock, Judge Robertson and Colonel John L. Peeler were Democrats and were elected as Democratic nominees.

It is admitted that at the regular session of the Legislature of 1901, Judge D. A. McFall, then a Representative in the Legislature from Travis County, introduced in the Legislature a bill to revoke the permit to do business in Texas granted to the Waters Pierce Oil Company on May 31, 1900; and that the Legislature failed to pass the bill.

It is also admitted that Judge D. A. McFall, as the Representative from Travis County of the Legislature of Texas, at the regular session in 1901, introduced a resolution to investigate Senator Bailey on account of his alleged connection with the admission of the Waters Pierce Oil Company into Texas, and its obtaining its permit on May 31, 1900; and it is agreed that the Journals of that Legislature with reference to that matter may be considered in evidence and either party may refer to them in the argument or incorporate in the record any part of those Journals that they may desire.

341 WALTER CALDWELL, for the defendant, testified as follows:

My name is Walter Caldwell. I have lived in Travis County since 1874. I live at No. 1009 West Sixth Street in Austin. I have not lived in any other portion of Travis County than the city of Austin. My home was in Bastrop county before I came here. I am best acquainted in the Southeastern portion of Travis County. I am acquainted in Hornsby's and Webberville, but better acquainted around in the Del Valle country. I have a pretty general acquaintance in the city of Austin. During the last six months I have heard expressions among the citizens with reference to the Waters Pierce Oil Company as to whether it is a trust and as to its being admitted to do business in this State through fraud practiced on the State; I have heard people assign that as their reason for their opposition to Mr. Bailey. I have heard quite a number of people assign that as their reason for their opposition to him. The matter was the subject of general discussion during that trial here in the Legislature in January and February of this year. I have heard very little about it since then. I think it is the general opinion that the Waters Pierce Oil Company is a trust, and I have heard it charged that its re-admission into this State was procured by fraud. I have just heard it in a general way that the Waters Pierce Oil Company is a trust. I have heard people from portions of Travis County outside of the city of Austin express themselves on the subject, but generally the talk I have heard about it was in the city. I may have occasionally talked about the subject on the road going out to my farm with some farmers, but I don't remember any particular instance. I have not heard anybody speak in favor of or undertake to defend

the Waters Pierce Oil Company. I have heard people defend Mr. Bailey for his connection with this oil company, but they
342 didn't defend the company, not that I remember of.

Cross-examination:

I have not heard the facts of this case discussed that I know of; it may be that I have, but I don't remember it now. In fact, I don't know the merits of the case. From what I have heard and know about the matter, I have no reason to suppose that the Waters Pierce Oil Company cannot get a fair and impartial trial in this county. I think there are plenty of good men in this county who will observe the law and their oaths.

Redirect examination:

As to whether or not I take into consideration the fact that a man's prejudgment of a question may unconsciously influence his action, I would much rather a man would be biased in my favor than against me. So far as I have heard opinions expressed by people in this county, I believe they are prejudiced against the Waters Pierce Oil Company.

Recross-examination:

I believe I could give the defendant a fair and impartial trial if I were on the jury. I believe that there are plenty of men honest enough, notwithstanding they may be prejudiced, that would come here and give an honest verdict according to the law and the evidence. I don't know how many such men there are in this county, but there are plenty of good people in this county. I think there are more than twelve such men in this county. I don't know whether there are more than twelve such men in my own ward or not. I believe there are plenty of men in this county, that would be entirely willing to disregard newspaper statements that
343 they have read and the general talk that has been indulged in and come here and fairly and impartially try this case.

Redirect examination:

The idea I mean to convey is, that I think that any fair, honest and conscientious man ought to be able to come here and when sworn on the jury lay aside any prejudice he might have and make up his verdict entirely on the testimony that is adduced on the trial and the law as given in charge by the Court. I believe that an honest man will lay aside his prejudice as far as a human being can do it and bring in a verdict on the law and evidence.

J. L. NICHOLS, for the defendant, testified as follows:

I live eight miles South of the city of Austin, out near Manchaca. I have lived there fifty odd years. My acquaintance is general in that community, and I know a good many people here in Austin. I have been living or staying in Austin since about the 18th of last January, being employed up at the Capitol now as one of the Capitol policemen. During the last four or five months I have heard very

few expressions of opinion among the people living in and around Manchaca with reference to the Waters Pierce Oil Company and the Bailey controversy, as I have been in Austin the most of the time. During December and January before I came here I heard a few expressions of opinion on that subject around Manchaca, but very few. The expressions of the people I heard discuss it were that the Waters Pierce Oil Company is a trust, and they thought its admission to do business in Texas was a fruad. I have heard very few people express themselves on the subject; I could not be positive as to the number. I have not heard anybody in that commu-
344 nity express a contrary opinion. Since I came to Austin to work at the Capitol, it was general talk for a month or two around the Capitol, but I paid very little attention to it. There were a good many whom I know and a good many whom I did not know that discussed the matter. Among those whom I knew as living in Travis County the opinion expressed was that the Waters Pierce Oil Company was a trust and its admission to do business in Texas was a fraud. I have not heard anybody in the city of Austin express a contrary opinion.

Cross-examination:

I don't think I have heard anything to indicate that the defendant could not get a fair and impartial trial in this county. From the talk I heard at Manchaca and since I have been working at the Capitol I don't know whether the defendant can get a fair and impartial trial in this county or not. From what I have heard, it would be a hard matter to get a jury. I have talked to very few people about it at Manchaca. I have not talked to more than three or four men here in town about it. I have just heard them casually talking about it. My idea is that if everybody else believed like those three or four it would be hard to get a fair trial here. I have never heard the facts of this case discussed. The most of the discussion I have heard about it was with reference to the Bailey controversy that existed some time ago. It has not been talked of for some time. It has been some time since I have heard anybody say anything about it at all. I think something near half of the voters at Manchaca box felt enough interest to vote at the election held in January in the Bailey controversy. The others didn't feel enough interest in it to go to the polls. I could not tell whether or not a number of jurors could be obtained at Manchaca who would fairly try
345 this case, as I have not been there for some time. I don't know whether I could fairly try the case or not. If I were on the jury I think I would decide the case on the evidence before me, without reference to any facts I may have gathered from the newspapers or general talk. I believe the most of the people I know at Manchaca would be just as fair and impartial as I would.

I know Tom Carpenter and John Patterson very well. They are residents of Manchaca. I suppose they understand public sentiment there better than I do, as I have not been to Manchaca for several months. They live right there, and I hardly ever go to Manchaca even when I am at home.

Redirect examination:

I am in some doubt as to whether or not I could act as a juror impartially in this case. I have formed an opinion about the matter, and would not like to serve on the jury. I believe that the Waters Pierce Oil Company is guilty and that it ought to lose out in this case. I am in doubt as to whether or not I could look at the testimony of Mr. Pierce and other officers of the company and weigh it as impartially as I could if I had no opinion, if I were taken on the jury. In expressing the opinion that the company could get an impartial trial of this case I think that any honest man ought to be able when taken on a jury to lay aside his former opinions and prejudices and render a verdict based solely on the evidence. I don't believe you could get a jury in this case without getting men on it who had already made up their minds, like I have, that the company is guilty.

Recross-examination:

That is based simply on the little knowledge I have from the talk at Manchaca and with a few people here in town. I don't
346 know anything about the balance of the county. I suppose there are a number of people at Manchaca and in that neighborhood who don't care anything about the Waters Pierce Oil Company, don't read the papers at all, haven't taken any stock in this business, and don't know anything about it. If they did-'t know anything about it, I don't suppose they could be prejudiced.

W. M. McElroy, for the defendant, testified as follows:

I live at No. 3012 Gaudalupe Street in Austin. I have lived in Austin about eleven years, and in Travis County thirty-three years. I know a great many people in Travis County. As to which portion of the county I am best acquainted in, there isn't much difference. I am engaged in buying cotton, down on East Fifth Street. I have been engaged in that business ever since I have been here. I have been in the cotton business about seventeen years. In my business I am brought in contact with citizens of Austin and different portions of Travis County. I buy cotton from both producers and merchants. During the past five or six months I have heard a good deal of talk with reference to whether or not the Waters Pierce Oil Company is a trust or monopoly and as to whether or not the admission of the present company into Texas to do business was procured by fraud. I have heard it discussed both by people here in the city and by country people. I could not say just what portions of the county the country people were from; they would meet down at the yard or at my office and be talking about it. From what I have heard, I believe the most of the people regard the Waters Pierce Oil Company as a trust or monopoly operating here in violation of law.

I have not heard anybody express a good word for the com-
347 pany until to-day, when I heard three men do so. The rest of the people I have heard discuss it were demeaning the company and saying they ought to be driven out of the country. I didn't pay any attention, only they were just talking. From what

I have heard and from my knowledge of the people of this county, I do not believe you could secure in this county a fair and impartial jury of men who have no prejudice. Taking into consideration the statement that among the issues in this case are the charges that the defendant company is a trust and a monopoly and that its admission into the State was procured by fraud, I do not believe you could secure a jury of impartial men in this county, from what I have heard.

Cross-examination:

I do not think I could try the case fairly. All I know about the matter is from general rumors, newspaper articles and all that kind of business. I have not heard any discussion of what purported to be the facts that are to be introduced in the trial of this case. I do not know what defense is to be made here, nor the character of the evidence that is to be introduced against this company. I could not fairly try the case because from what I have heard and read my opinion would be sort of made up, and when a man makes up his mind it is hard to change it. I don't know whether or not I could come here and try the case according to the testimony; I might do it. I would not like to say. I am not certain about it.

I think there are about 470 voters in my ward. I don't know how many of those I have heard express themselves on this subject, but at the last school election Mr. Marcuse and others were talking about it. I suppose I have heard fifty of the voters in that ward
348 express themselves. They were not all talking to me, but just standing there talking. I have not heard a single one say he could not try the case fairly; I have not heard anything on that line at all. As to the other 420 voters in that ward, I have not heard any expression from them. I have heard more talk down at my place of business than up there. I could not say how many I have heard talking about it down there, but maybe fifty or more. I have heard a larger percentage of people in my own ward talk about it than in any other ward, but I have more of them talking about it down at my place of business. I have not heard as many as fifty men from one voting box talk about the matter, and I know nothing of what are the views of about 420 voters in my own ward. I am not certain that I have heard even as many as fifty men in my own ward talk about it; I may have heard more than that, or maybe not that many, because I didn't pay any attention to the number. I don't think I could right now indicate more than four or five men who I have heard talk about it, because I didn't pay much attention to them. As to whether or not I am in position to say that the qualified voters in the Sixth Ward could not come here and qualify as jurors in this case, I don't know except as to those I have heard talk about it; that's all I can tell you.

Redirect examination:

I have not heard any one say a good word for the Waters Pierce Oil Company. I don't know exactly the number, but I believe there were about 370 votes polled in my ward in the Primary election held

early in January to instruct our representatives whether or not they should vote for Senator Bailey for re-election. That ward went against Senator Bailey in that election, but I do not remember
349 by what majority now. The basis of the opposition to Senator Bailey or the reason assigned for not supporting him was that they said he was concerned in this trust business with the Waters Pierce Oil Company as attorney or something—anyhow, that he had been implicated in it in some way.

Recross-examination:

I don't know how many I heard assign that as their reason for their voting against Senator Bailey, but I heard several men say so. A very large percentage of the voters there did not express themselves in my hearing. As to the most of them, I don't know what influenced them.

Redirect examination:

I could not say as to whether the opposition in my ward to Senator Bailey began about the time this suit was filed or not. I don't know what time it was, as I was not paying any attention to it. I was the Democratic Chairman in that precinct last year. There was no issue in regard to Mr. Bailey in the Democratic primaries last July. I did not hear any opposition to Mr. Bailey up to that time. The first I heard that Mr. Bailey was attorney for the Waters Pierce Oil Company was just after the State Democratic Convention last year.

Recross examination:

Mr. Bailey's name was not on the tickets at the Primary election last year.

W. B. WALKER, for the defendant, testified as follows:

My name is W. B. Walker, and I live in Austin. I have lived here thirty-five years. I am engaged in the wholesale grocery busi-
350 ness. I have been in the wholesale business seven years, and before that was in the retail grocery business. When I was in the retail business I knew nearly every man in Travis County. I have not now as good an acquaintance in the county as formerly.

As to my opinion of the Waters Pierce Oil Company, I think they are a lot of thugs. I have expressed that opinion whenever anybody asked me about it. Everybody that knows anything about the oil business knows that the Waters Pierce Oil Company is a trust. I mean everybody in Texas or the United States or Travis County or anywhere else. Of course its admission to do business in Texas after the old company was excluded was a fraud. They simply turned their coats and came back into Texas. They have some friends here, but not many, I think. I have not talked with country people at all about it; I have talked only with merchants and the grocery merchants. Some of the people I have talked to in the last few months don't care anything about it, and half the people of this county don't know the Waters Pierce Oil Company or who they buy oil from.

(No cross examination.)

J. M. MEREDITH, for the Defendant, testified as follows:

I live in Hyde Park, and am engaged in the retail grocery business. I have been engaged in that business out there about five years. I have a general acquaintance in Austin and the Northern part of Travis County. My acquaintance is limited in the Southern and Eastern portions of the County. I get my trade from the Northern part of the city and the Northern part of the County. I have customers in Hyde Park and some as far down as Nineteenth street and some out as far as the county line, out about Fiskville and
351 Sprinkle. I am one of the Aldermen of the City of Austin.

During the past five or six months I have heard considerable discussion of the Waters Pierce Oil Company among the people of this city and county. My place of business out there as rather a public place; there is a watering trough there and a great many farmers stop there. During the Bailey controversy there was always more or less people on my porch there discussing that matter, day in and day out. I don't remember when it began, but it was all during the first part of the Legislature last Winter; it was almost a constant thing that more or less people were there talking about that matter. The testimony taken before the Bailey Investigating Committee was published in the daily newspapers, and I read it every day. The testimony was discussed as it came out. I had the "Statesman" there and somebody would get it and read it, and that would start the discussion. It was almost the universal opinion of the people I heard discuss it that the Waters Pierce Oil Company was part of the Standard Oil Company and in the trust. It was the general belief that the present company re-entered the State in a fraudulent manner, as far as I have heard it discussed. I have never heard anybody say a good word for the Waters Pierce Oil Company in my life. Among those whom I have heard discuss the matter there were citizens of the county and residents of the city. This matter was the subject of general discussion at my store for a period running over several months by people stopping there. Basing my opinion upon the expressions of the people of my acquaintance whom I have *I have* heard discuss it, I will say that if the sentiment of the county is the same as that among the people I have heard discuss it, I do not think you could secure in this county a jury of impartial, unprejudiced men who have not made up their minds with reference to any of the issues in this case; but I
352 do not pretend to know the sentiment of the majority of the people of Travis County. I have an opinion on the question, and would not attempt to sit as a juror in the case.

Cross-examination:

I have customers living out at Fiskville and farther up towards the mountains. A good many people come from Sprinkle and trade with me. I would not attempt to name them, but a good many people come by there and stop to water their horses and probably come in and buy something and sit down and talk. I haven't any customers from Pecan Springs; that is too far East. There are more than three or four parties from Sprinkle that come by and

purchase from me; there are probably eight or ten from Sprinkle. Almost everybody from Fiskville in coming to Austin has to come by my place, but they don't all stop. All the people from Fiskville did not stop at my store and discuss it. I have no idea how many of them stopped there. Just a small percentage of the whole number of people in that section came by and talked about this question at my place, but I could not tell you what per cent. I don't suppose I have heard over ten per cent. of the qualified voters residing in that portion of the county discuss the subject. I do not suppose I have heard one-tenth of the qualified voters of the Fourth Ward discuss the matter, and my idea is based on the expressions of a limited number of the people as compared with the whole. I know absolutely nothing about the sentiment of the East end of the county running from Hyde Park out East, nor do I know the sentiment of the mountain people up about Jollyville. If the sentiment of the people of the county is the same as among the people I know, I don't think you could get a jury of impartial men, but whether
353 or not the sentiment is the same I cannot say. If every other man in Travis County thinks like I do, the defendant could not get a fair trial, but I don't undertake to say that they do. I heard some discussion as to whether the Waters Pierce Oil Company was a trust, independent of the Bailey controversy, but very few. I buy oil from the company, and abuse them once in a while. I have not discussed the question with their driver—their driver won't talk. I believe the Waters Pierce Oil Company is a trust, and would like to see it fired. I have not heard the facts discussed by anybody that knew the facts any better than I did, and have not heard anybody that knew the facts say that it is not a part of the Standard Oil Company. Everybody that discussed the question just assumed that it was a trust, without knowing any of the facts. I have prejudice instilled into my mind so deep that I would not attempt to go into the jury box, because I would be afraid of myself. I could not *law* aside my prejudice; it would not be human to do it. I am not setting myself up as a standard for other people; they can do as they please. I have been dealing with the company for several years and have had it in my mind and have discussed it with my neighbors. I have discussed it with other merchants and with drummers. I have given the question considerable thought, and have read a good deal about it. I have read magazine articles, on the subject. I have read Mr. Tarbell's magazine articles. I would not undertake to say that all the other people of Travis County—the farmers, merchants, laboring men and others—have given the subject the same thought as I have and formed the same ideas. I don't suppose more than one man in ten has as great prejudice against the Waters Pierce Oil Company as I have. I do not mean that all the other people out there entertain the same views as I do; they are not quite as radical as I am. Some of those men are just as honest as I am. I have heard some good men testify here that a fair trial can be had in this county, and I regard
354 them as honest men. They may believe what they say they could do. I am just as honest on the other side that I could not do it. I don't know whether the defendant com-

pany can get a fair trial in this county or not; it might get as fair a trial here as it could in any other.

Redirect examination:

If Mr. Brady were running for District Attorney, and I heard ten per cent. of the people out in the North End of the county and in my neighborhood express themselves very bitterly against him, and the same reports came from Webberville, Creedmoor, Manchaca, Manor and elsewhere, and I never heard any one speak a good word for him, I would not think he stood very good chance of election.

Recross-examination:

If I heard only thirty or forty men express themselves, and did not know anything about the rest of the county, I think I would have a pretty good idea of how it would result. I have been an officer myself, and had some boxes where I got a few votes, but still won out.

Defendant next introduced in evidence the head-lines and following portions of an editorial published in the Houston Chronicle of date Feb. 8th, 1907, the head-lines and portions of said editorial so introduced being as follows:—

Defending H. Clay Pierce.

Whatever may be thought of a newspaper professedly democratic, and therefore supposed to be in sympathy with the doctrine of the party for the suppression of the trusts, no one can sincerely say that the Houston Post has not consistently defended H. Clay
355 Pierce, one of the greatest trust masters in the United States. Even in behalf of its own idol, Senator Bailey, the Post has not been more vigorous, nor his it been more vehement in its denunciation of the anti-Baileyites than of those whose official duties made it necessary to bring out the facts and circumstances upon which the grand jury of Travis County indicted H. Clay Pierce for perjury.

There are two men, at least who in the estimation of the Houston Post can do no wrong. One of them is H. Clay Pierce, a self-confessed perjurer, and now under indictment in Texas, and the other is Senator Joseph Weldon Bailey, how being investigated upon charges which, if proven, show a moral unfitness for the office of United States Senator, or of any other office of trust in a representative form of government.

* * * * * * *

It is a singular coincidence that the Post first took a fancy, to the magnificent character and magnetic personality of Henry Clay Pierce just after Senator Bailey had successfully officiated at the ceremonies attendant upon the readmission of the oil octopus into the State. Then it was that the Houston Post discovered so much for the common weal, in the way that Henry Clay Pierce was "Bowing to the Law," and this was chronologically just after Senator Joseph Weldon Bailey, upon the strength of a day's acquaintance, had made that historical "touch" for $3300, and various other sums.

When the Post commended Henry Clay Pierce's method of "bow-

ing to the law," six years ago, about the time Pierce committed perjury in order to get the oil octopus back into Texas, it is to be taken for granted that it did not know of the act of perjury, because Senator Bailey declares that he did not know of it. There-
356 fore, since Senator Bailey, though declaring that Pierce had deceived him, has not denounced him for his perfidy, it seems to be another one of those coincidences to find the Post vehemently and blindly defending Henry Clay Pierce, as appears from the following from an editorial, which appeared in that paper the other day.

* * * * * * *

The substance of Pierce's affidavit in Texas was that the Waters Pierce Oil Company was not a trust. The substance of Pierce's testimony in the Missouri ouster cases was that the Waters Pierce Oil Company was a trust at the time it was re-admitted to Texas, because its stock was owned by the Standard Oil Company. This kind of perjury the Post calls "technical rather than criminal." The Post has evidently discovered a new class of falsehoods, which it would call "technical."

In certain pleadings at law, it is necessary to make what is called a formal oath, and the fact that all of the allegations are not proven does not subject the affiant to the charge of perjury. But there is no sort of similarity between the formal oath in pleadings in a suit and the affidavit which Pierce was required by law to make before the oil octopus could be readmitted to Texas.

The Waters Pierce Oil Company had been convicted of "making exclusive contra-ts," and that constituted it a trust in the opinion of the Courts. Therefore how perfectly absurd and supremely ridiculous is the assertion that an affidavit required by law that the company is not a trust is "technical rather than criminal."

Pierce knew that his company had been convicted of being a trust, because he knew that it was necessary for a pretended dissolution and reorganization in order to get back into the State. Therefore he must have known that the affidavit for readmission was not a
357 formal affair.

* * * * * * *

Therefore if the Post's own excuse for Pierce is accepted, he is none the less guilty at law, but his lawyer becomes an accessory before the facts, and is likewise guilty of crime.

It is incomprehensible, however, that Henry Clay Pierce is as ignorant of what constitutes an oath at law as the Houston Post professes itself to be, and it is not likely that he will plead the "baby act" by incriminating his lawyer when he cannot extricate himself thereby from the meshes of the law.

Evidently Henry Clay Pierce may be as big as knave as the Post's line of defense seems to indicate, but he is not all kinds of a fool. The Post's devotion is sublime, but its method of defending absurd and ridiculous.

Defendant next introduced in evidence pages 1, 2, & 3, of the Houston Chronicle of the issue of Jan. 27th, 1907, the pages so introduced being as follows:

(Here follows facsimile marked pp. 358, 358*a*, and 358*b*.)